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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

no brief filed on merits

No. 362

FONTAINE LEMAISTRE, PETITIONER,

vs.

HERMAN LEFFERS, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

PETITION FOR CERTIORARI FILED SEPTEMBER 22, 1947.

CERTIORARI GRANTED NOVEMBER 10, 1947.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN CIRCUIT COURT, LEE COUNTY, FLORIDA. IN CHANCERY

FONTAINE LEMAISTRE, Plaintiff,

vs.

HERMAN LEFFERS and ESTELLE LEFFERS, his wife, W. H. CONROD and SARA LOUISE CONROD, his wife, and THE SUN OIL COMPANY, a corporation under the laws of the State of New Jersey, Defendants

Bill to Redeem, for Accounting and Injunction

BILL OF COMPLAINT—Filed March 25, 1946

To the Honorable Judges of said Court:

The plaintiff, Fontaine LeMaistre of 2968 St. Johns Avenue, Jacksonville, Florida, by his undersigned attorney, W. B. Shelby Crichlow, brings this, his bill of complaint against Herman Leffers and Estelle Leffers, his wife, W. H. Conrod and Sara Louise Conrod; his wife, each of Lee County, Florida, and the Sun Oil Company, a corporation under the laws of the State of New Jersey, having the principal office in the city of Dallas, Texas, as defendants and thereupon the plaintiff complaining says:

1

This action is brought under the provisions of the amendment of October 6, 1942 to Section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940 which provides as follows:

> "The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period

of such service, nor shall any part of such period which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (October 6, 1942) be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax or assessment."

2

[fol. 2] During the month of May, 1942 the plaintiff, Fontaine LeMaistre was inducted into the United States Naval Reserve and went into active duty at Naval Air Station, Quonset Point, R. I., on the 18th day of August, 1942 and continued in active duty as Lieutenant Commander up to and including the 18th day of December 1945, on which day he was placed on the inactive list of the Navy.

3

That by reason of the existence of said military service of the said plaintiff, as aforesaid, the provisions of the amendment of the preceding act applied to him from the date that the same became effective, to wit; the 6th day of October, 1942, and were self-executing and gave an automatic extension of time for the redemption of any taxes or tax certificates which were then outstanding or delinquent under the laws of the State of Florida against lands of this plaintiff.

4

That on the 5th day of August, 1940, tax certificate #40 was issued in the name of the plaintiff, Fontaine LeMaistre against all of section 18, township 43 south, range 24 east, containing 640 acres, lying and being in Lee County, Florida, for the non-payment of state and county taxes for the year 1939 and on the 29th day of January, 1943, Jennings B. Jones, the holder of said certificate, filed application in the office of the clerk of circuit court for Lee County, Florida, for the issuance of a tax deed based thereon and paid and redeemed all of the taxes on said lands and the cost and expense of said sale and such lands not having been redeemed, the said property, pursuant to published notice of application for tax deed was offered for sale on the 1st day of March, 1943, and sold by said Clerk

of Circuit Court to W. H. Conrod for the sum of $150.00 [fol. 3] and thereupon a tax deed was issued to said W. H. Conrod by D. T. Farabee, Clerk of Circuit Court of Lee County, Florida, dated the 1st day of March, 1943, which said deed was recorded in deed book 148 as page 135 of the public records of Lee County, Florida.

5

That by instrument dated the 1st day of December, 1943 and recorded in Miscellaneous Record of Deeds, Book 21 page 113 of the public records of Lee County, Florida, W. H. Conrod and Sara Louise Conrod, his wife, undertook to execute a lease of the oil and mineral rights in the said lands located in the north half of section six and section 18, township 43 south, range 24 east, to the Sun Oil Company, a New Jersey corporation, defendant herein, for cash consideration of $144.00 and an annual rental of $96.00 per year, giving and granting unto the Lessee, under the terms and conditions set forth, the right and privilege to explore and drill for oil on said lands, which agreement was subsequently modified by instrument recorded in Miscellaneous Deed Book 22 at page 148 of the public records of Lee County, Florida, wherein the Citizens National Bank at Tyler, Texas was named as payee for the lessors to receive the rent and royalties which might arise under the provisions of the said instrument for and in the behalf of the lessors therein named.

6

That by deed dated the 22nd day of April 1944; recorded in deed book 153 at page 262-263 of the public records of Lee County, Florida, W. H. Conrod and Sara Louise Conrod, his wife, undertook to convey by statutory warranty deed, for a consideration therein named of $1500.00 to the defendant Herman Leffers of Lee County, Florida, the following property located in Lee County, Florida, to wit: "Section 18, township 43 south, range 24 east, together with all the oil and mineral rights of said land, subject to the lease of the Sun Oil Company." Said instrument was filed for record on the 2nd day of May, 1944, in Lee County, Florida.

[fol. 4]

7

This plaintiff never, at any time, received any actual notice of application for tax deed, being at the time that the application was made for tax deed, and until the 26th day of February, 1943, in active line of duty, at which time on the 26th day of February, he was extremely seriously injured with multiple injuries sustained in the crash of a navy plane in which he was making flight in the rounds of duty and on the date that the aforesaid sale took place was in Union Memorial Hospital, Baltimore, Maryland, suffering and recuperating from such injuries, at the time that the defendant, W. H. Conrod, was undertaking to speculate through tax deed on the plaintiff's property.

8

That on or about the 15th day of March, 1944, the Clerk of the Circuit Court of Lee County, Florida, as trustee, tendered to this plaintiff his check for $12.07 as the over plus arising from the bid of the said W. H. Conrod of $150.00 for said property, acceptance of which said check was refused by the plaintiff and said check was thereafter returned to said clerk. The said amount of $137.93 being all amounts due under said certificate #40, including all taxes for the years 1939, 1940, 1941 and 1942 together with all costs and expenses provided by statute for issuance of the tax deed on said lands.

9

The Plaintiff prays the court to find and determine that the rights of said W. H. Conrod and Sara Louise Conrod, his wife, and Herman Leffers and Estelle Leffers, his wife, have acquired by said tax deed only an assignment of said tax certificate #40, sale 1940, and other taxes and costs as above stated and have a lien therefor upon section 18, township 43 south, range 24 east, containing 640 acres more or less in Lee County, Florida and said tax deed is subject to [fol. 5] the rights of redemption by this plaintiff by reason of his being in military service at the time that said sale and deed were effected and that the Sun Oil Company has no right, title or interest into said lands by reason of its lease and that its lease is void; that upon the payment by the plaintiff of the amount due under said tax certificate #40 and said tax deed into the Registry of Court, that the

aforesaid deed of conveyance and each of them be decreed paid, cancelled, redeemed and void; and the said plaintiff hereby and herewith tenders and pays into the Registry of said Court the sum of $137.93 with interest thereon at the rate of 6% per annum from and after the first day of March, 1943 to the date of the filing of this complaint being $163.24 in full satisfaction, redemption and discharge of the aforesaid taxes and tax liens and further consents and agrees to repay the defendants for any amounts which they have paid out for taxes levied on or against said property from or since the date of the aforesaid tax deed and the plaintiff prays the court that he may have such other and further general relief in the premises as the court may find proper.

10

The plaintiff further alleges that there is valuable timber located upon said land and prays the court for an injunction restraining the defendants Herman Leffers and Estelle Leffers, his wife, and the Sun Oil Company from trespassing upon said property or in any way interfering with the rights, title or interest of the said plaintiff in or to said land, and that in the event that the said Herman Leffers or the said W. H. Conrod have undertaken to remove any portion of the timber from the said land or to cause said timber to be turpentined, that they be required to account for any money arising from such trespass upon said property and that this plaintiff be awarded damages for all injuries to said timber occasioned by the said defendants, Herman Leffers or W. H. Conrod and their grantees or any of them and that such injunction that is herein prayed for to be both temporary and permanent.

(Signed) W. B. Shelby Crichlow, Attorney for Plaintiff.

[fol. 6] *Duly sworn to by W. B. Shelby Crichlow; jurat omitted in printing.*

[fol. 7] IN CIRCUIT COURT, TWELFTH JUDICIAL CIRCUIT OF FLORIDA, LEE COUNTY, FLORIDA.

[Title omitted]

SUMMONS AND RETURN ON HERMAN LEFFERS, et al.

STATE OF FLORIDA

The State of Florida to Herman Leffers and Estelle Leffers, his wife, and W. H. Conrod and Sara Louise Conrod, his wife, Greetings:

You are hereby notified, that a suit has been brought against you in the Circuit Court for Lee County, Florida, in Chancery, by Fontaine LeMaistre (Bill for Accounting, to Redeem and Injunction) and you are hereby required to file with the Clerk of said Court your written appearance (personally or by attorney) in said suit on the first Monday in May A. D. 1946 being the 6th day of said month, and thereafter to file with said Clerk your written defenses, if any, to the bill of complaint in said suit at the time prescribed by law.

Herein fail not or judgment will be entered against you by default.

Witness my hand and seal of said Court, at Fort Myers, Florida, this 25th day of March, A. D., 1946.

(Signed) D. T. Farabee, Clerk of said Circuit Court.
By A. N. Odom, Deputy Clerk. (Seal)

Sheriff's Return

Came to hand this 25th day of March, 1946 and executed same in Lee County, Florida by delivering a true copy of this summons in chancery to the within named defendants, Herman Leffers, W. H. Conrod, Sara Louise Conrod. With the words "Copy of Summons in Chancery" written thereon, together with the name of complainant's solicitor, and at the same time exhibiting the original of such summons to such defendants.

This 26th day of March 1946.

Floyd Ellis, Sheriff, Lee County, Florida. By (signed) Bryant Baker, Deputy Sheriff.

[fol. 8] IN CIRCUIT COURT, LEE COUNTY, FLORIDA, IN CHANCERY

[Title omitted]

LIS PENDENS—March 25, 1946

To whom it may concern, take notice:

That an action has been filed by the above named plaintiff, Fontaine LeMaistre against the above named defendants, Herman Leffers and Estelle Leffers, his wife, W. H. Conrod and Sara Louise Conrod, his wife, and the Sun Oil Company, a corporation under the laws of the State of New Jersey, in the Circuit Court of Lee County, Florida, In Chancery, for the purpose of redeeming the title and taxes paid on section 18, township 43 south, range 24 east, containing 640 acres more or less, lying and being in Lee County, Florida, under the provisions of the statute of the State of Florida and of the United States and ask the court to cancel all conveyances affecting said title by the defendants from and since the 1st day of March, 1943 and for an accounting and injunction against further trespassing upon the property of the plaintiff.

(signed) W. B. Shelby Crichlow, Attorney for Plaintiff.

[fol. 9] IN CIRCUIT COURT, LEE COUNTY, FLORIDA. IN CHANCERY

[Title omitted]

RECEIPT FOR DEPOSIT OF $163.24 IN THE REGISTRY OF COURT BY THE ABOVE PLAINTIFF—Filed March 25, 1946

STATE OF FLORIDA,
County of Lee:

I, D. T. Farabee, as Clerk of Circuit Court for Lee County, Florida, in chancery, do hereby certify and acknowledge that there has been paid into the Registry of this court, in the above entitled cause, as is recited and referred to in paragraph 9 of the Bill of Complaint, the sum of $163.24 by the above plaintiff, Fontaine LeMaistre.

In Testimony Whereof, I have hereunto set my hand and seal this 25 day of March, 1946.

(Signed.) D. T. Farabee, Clerk of Circuit Court, Lee County, Florida. In Chancery. (Seal.)

[fol. 10] In Circuit Court, Lee County, Florida. In Chancery

[Title omitted]

Notice of Hearing—Filed March 25, 1946

To the Defendants; Herman Leffers and Estell Leffers, his wife, W. H. Conrod and Sara Louise Conrod, his wife, and the Sun Oil Company, a corporation under the laws of the State of New Jersey, Take Notice:

That a Bill of Complaint has been filed against you and each of you in the above entitled case, in the Circuit Court of Lee County, for the redemption of Section 18, Township 43 South, Range 24 East, Lee County, Florida for tax liens evidenced by tax deed to W. H. Conrod and later deeded to Herman Leffers, with oil lease to the Sun Oil Company, which said deeds merely amount to an assignment of the tax lien against said property on account of the military service of the owner, in the United States Armed Forces at the time that said tax deed was issued, and also, prayer for accounting and injunction against trespassing upon the aforesaid land.

Notice is hereby given that I shall apply for a temporary injunction before the Honorable George W. Whitehurst, one of the judges of said circuit, in chambers at courthouse, Sarasota, Florida, on Friday, March 29th, 1946 at 10:30 A. M. You are hereby requested to be present if so desired.

(Signed) W. B. Shelby Crichlow, Attorney for Plaintiff.

[fol. 11] AFFIDAVIT

STATE OF FLORIDA,
County of Manatee:

I hereby certify that I did, on the 23rd day of March, 1946, mail a full, true and complete copy of the above and foregoing notice to each of the above named defendants, being deposited in the receptacle provided for the receipt of outgoing mail in the United States Post Office at Bradenton, Florida, each letter being securely sealed and having full letter postage, prepaid. Respective envelopes were addressed as follows:

1. Mr. and Mrs. Herman Leffers, Fort Myers, Fla.
2. Mr. and Mrs. W. H. Conrod, Alva, Florida.
3. Sun Oil Company, Fort Myers, Florida.

(Signed) Ruth A. Murray.

Sworn and subscribed to before me this 23rd day of March, 1946. (Signed) Clara B. Balis, Notary Public, State of Florida at Large. My commission expires August 15, 1947. Bonded by American Surety Co. of N. Y. (N. P. seal affixed.)

[fol. 12] IN CIRCUIT COURT, LEE COUNTY, FLORIDA. IN CHANCERY

[Title omitted]

ORDER OF INJUNCTION—Filed March 30, 1946

This cause coming on to be heard before me this day on application for temporary and permanent injunction as prayed for in and by the bill of complaint on file herein and the court having examined the records in said cause, finds that due notice of the application for this injunction has been given to the defendants Herman Leffers and Estelle Leffers, his wife, W. H. Conrod and Sara Louise Conrod, his wife but that the Sun Oil Company, a corporation under the laws of the State of New Jersey has not yet been served; that the plaintiff has deposited in the Registry of this Court, a sum of money sufficient to redeem and pay the tax certificate and cost of application for tax deed, as of March 1st, 1943, being the sum of $137.93 and has also deposited interest thereon from and since the 1st day of March, 1943

to the first day of April, 1946, being the total amount of $164.24, as is recited in and by the paragraph #8 of the complainant's bill of complaint. Receipt for which appears in the files of this cause by the Clerk of Circuit Court of Lee County, Florida and that the original check of $12.07 drawn by the Clerk of said court to the order of the plaintiff, [fol. 13] has been returned to said Clerk. The plaintiff further having produced proof to the satisfaction of this court that he was in the military service of the United States being in the United States Naval Service, from and after the 24th day of July, 1942 continuously to and including the 18th day of December, 1945, upon which day he was placed upon the inactive list but prior to which time he was engaged in active service of the United States Naval Forces, having served one year 7 months and 13 days in foreign and or sea service during said period; and further having produced evidence of the ownership of the land hereinafter described from and after the 23rd day of May, 1923 and that he is entitled to redeem said property from the tax sale and tax deed in said bill of complaint, after and pending final hearing on bill of complaint, asks for a restraining order against the defendants Herman Leffers and Estelle Leffers, his wife, W. H. Conrod and Sara Louise Conrod, his wife, from trespassing upon or in any was interfering with the rights, title or interest of said plaintiff in said land.

Upon filing sufficient bond in the sum of $100,

It is Thereupon Ordered, Adjudged and Decreed that the said defendants Herman Leffers and Estelle Leffers, his wife, W. H. Conrod and Sara Louise Conrod, his wife are forever temporarily enjoined from any trespassing upon said property or any use or occupancy of the same; that they are specifically enjoined from any use of said property for pasturage or other purposes and that they are enjoined from cutting or removing any timber or turpentining any timber or permitting any one to turpentine or remove any timber from said lands or any license which they have issued herefore or contract which they may have made relative thereto, which may hereafter be attempted to be performed are temporarily therefrom enjoined until further order of Court.

Decreed and ordered in chambers in Sarasota, Florida, this the 29th day of March, 1946.

(Signed) Geo. W. Whitehurst, Judge.

[fol. 14] IN CIRCUIT COURT OF LEE COUNTY

SUMMONS AND RETURN ON SUN OIL COMPANY

STATE OF FLORIDA

The State of Florida to the Sun Oil Company, a corporation under the laws of the State of New Jersey:

You are hereby notified, that a suit has been brought against you in the Circuit Court for Lee County, Florida, in Chancery, by Fontaine LeMaistre and you are hereby required to file with the Clerk of said Court your written appearance (personally or by attorney) in said suit on the first Monday in May, A. D., 1946, being the 6th day of said month, and thereafter to file with said Clerk your written defenses, if any, to the bill of complaint in said suit at the time prescribed by law.

Herein fail not or judgment will be entered against you by default.

Witness my hand and seal of said Court, at Fort Myers, Florida, this 6th day of April, A. D. 1946.

D. T. Farabee, Clerk of said Circuit Court, by (Signed) A. N. Odom, Deputy Clerk. (Seal.)

On the 30th day of April, 1946, summons in chancery issued on the 6th day of April, 1946, was filed in this cause with the endorsement of the service by Sheriff in words and figures following:

No. 3530

ORIGINAL RETURN

Received this Writ on April 17, A. D., 1946 and executed same in Duval County, Florida, on April 20, A. D., 1946, by delivering a true copy thereof to, C. D. Rogers, as Assistant Secretary of the Corporation Company, as Resident Agent for the within named defendant, the Sun Oil Com-
[fol. 15] pany, a corporation under the laws of the State of New Jersey, in the absence from Duval County, Florida of the President, Vice-President, and other heads, Cashier, Treasurer, Secretary, General Manager, or any Director of the within named defendant or of the said Resident Agent, the corporation company upon which copy was endorsed the

name of the Court from which the original summons in chancery was issued. The title of the cause the words "Copy of Summons" and the name of the complainants solicitor, and at the same time reading this original and explaining the contents thereof.

Writ $2.60
2 mi. .25

2.85 HWM

Rex Sweat, Sheriff of Duval County, Florida.
By (signed) Harry W. Moore, Deputy Sheriff.

[fol. 16] In the Circuit Court, Lee County, Florida

In Chancery.

(Title Omitted)

Appearance for Sun Oil Co.—Filed May 4, 1946

The Clerk of said Court will please enter the appearance of Sun Oil Company, a corporation, one of the defendants named in the above styled case, as of the Rule Day of May, 1946, and oblige.

(signed) Osmond Bie, Attorney for the defendant, Sun Oil Company.
Osmond Bie, P. O. Box 186, Tallahassee, Florida.

[fol. 17] In Circuit Court, Lee County, Florida

In Chancery

(Title Omitted)

Praecipe for Decree Pro Confesso. Filed May 6, 1946.

The clerk of said court will please enter a Decree Pro Confesso against each of the following defendants in the above entitled cause for their failure to appear or plead to

the bill of complaint on file in this cause on the rule day of May, 1946, to wit:—

Herman Leffers and Estelle Leffers, his wife,
W. H. Conrod and Sara Louise Conrod, his wife, and
The Sun Oil Company, a corporation under the laws of the State of New Jersey.

(signed) W. B. Shelby Crichlow, Attorney for Plaintiff.

[fol. 18] IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA—IN CHANCERY

FONTAINE LEMAISTRE, Plaintiff,

vs.

HERMAN LEFFERS, et als., Defendants
May 7th next day after Rule Day, 1946.

DECREE PRO CONFESSO AGAINST HERMAN LEFFERS, et al.—Filed May 7, 1946.

And now on this day comes the Complainant by his Solicitor, W. B. Shelby Chrichlow, Esq., and ask — that a Decree Pro Confesso be entered against the Defendants Herman Leffers, W. H. Conrod and Sara Louise Conrod for want of appearance, plea, answer or other pleadings herein and the Sheriff having made the following return upon Summons in Chancery issued herein, to-wit:—

"Came to hand this 25th day of March, 1946 and executed same in Lee County, Florida, by delivering a true copy of this summons in chancery to the within named defendants, Herman Leffers, W. H. Conrod and Sara Louise Conrod, with the words "Copy of Summons in Chancery" written thereon, together with the name of complainant's solicitor, and at the same time exhibiting the original of such summons to such defendants. This 26th day of March, 1946. Floyd Ellis, Sheriff, Lee County, Florida, By Bryant Baker, Deputy Sheriff", and the Defendants having failed to appear, plead, answer or file other pleadings herein to the Complainant Bill herein filed; therefore it is ordered that the said Bill be taken as confessed by said Defendants and that the Complainant have leave to proceed Ex-Parte., as to the

defendants Herman Leffers, W. H. Conrod and Sara Louise Conrod.

Witness my hand this 7th day of May, A. D. 1946.

D. T. Farabee, Clerk, by A. N. Odom, D. C.

[fol. 19] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 20] In Circuit Court, Lee County, Florida, in Chancery

[Title omitted]

Praecipe for Decree Pro Confesso Against Sun Oil Co.—Filed June 3, 1946

The clerk of said court will please enter a decree pro confesso against the Sun Oil Company, a corporation, a defendant in the above entitled cause, on the rule day in June, 1946, for failure to plead to the plaintiff's bill of complaint on file in said cause.

(signed) W. B. Shelby Crichlow, Attorney for Plaintiff.

[fol. 21] In the Circuit Court, Lee County, Florida, in Chancery

No. 8382

[Title omitted]

Motion of Sun Oil Co. to Make More Particular—Filed June 3, 1946

Comes now the defendant, Sun Oil Company, by its attorney undersigned, and avers unto the Court that the allegation in the bill of complaint filed herein in reference to the time when the period of military service of the plaintiff began and ended is not stated with any degree of clearness and certainty, and could be better shown by an instrument in writing, to wit, plaintiff's discharge and report of separation from the U. S. Navy.

Wherefore, this defendant moves the Court to require plaintiff to attach as an exhibit to the bill of complaint, his discharge and report of separation from the U. S. Navy, or a true and exact copy thereof.

(Signed) Osmond Bie, Attorney for said defendant.

[fol. 22] IN THE CIRCUIT COURT, LEE COUNTY, FLORIDA, IN CHANCERY

[Title omitted]

MOTION OF SUN OIL CO. TO DISMISS—Filed June 3, 1946

Comes now Sun Oil Company, a corporation, by its attorney undersigned, and moves to dismiss the bill of complaint filed in the above styled case, because:

1. The bill of complaint fails to allege that the land described therein as having been sold for unpaid delinquent taxes, was real property owned and occupied for dwelling, professional, business or agricultural purposes by the plaintiff, or his dependents, at the commencement of his period of military service, and still so occupied by his dependents or employees at the time of the alleged sale.

2. It affirmatively appears from the allegations of the bill of complaint that title to the land in question, together with the right to sell and convey same, had matured in the State of Florida prior to October 6, 1942.

3. It affirmatively appears from the allegations of the bill of complaint that the plaintiff lost his right to redeem, if any he had, during the period of time when he was not in the military service of the United States.

4. The plaintiff has failed to allege that his military service materially affected his financial ability to pay the taxes on the land involved in suit, which became delinquent prior to his period of military service, or interfered with his duty and obligation to pay same.

5. The bill of complaint shows on its face that the plaintiff is guilty of laches in filing this suit.

(Signed) Osmond Bie, Attorney for said defendant.

[fol. 23] IN CIRCUIT COURT, LEE COUNTY, FLORIDA, IN CHANCERY

[Title omitted]

AMENDMENTS TO ORIGINAL BILL OF COMPLAINT—Filed June 15, 1946

To the Honorable Judges of said Court:

Comes now the above named plaintiff Fontaine LeMaistre, and makes the following amendments to his bill of complaint in said cause:

1. The plaintiff, Fontaine LeMaistre of 2968 St. Johns Avenue, Jacksonville, Florida, by his undersigned attorney, W. B. Shelby Crichlow, brings this, his bill of complaint against Herman Leffers and Estelle Leffers, his wife, W. H. Conrod and Sara Louise Conrod, his wife, each of Lee County, Florida, and the Sun Oil Company, a corporation under the laws of the State of New Jersey, having its principal office in the city of Dallas, Texas, D. T. Farabee, clerk circuit court, Lee County, Florida, and Real Estate Exchange, Inc., a corporation under the laws of the State of Florida, having its principal office located in Fort Myers, Florida, as defendants and thereupon the Plaintiff complaining says:

2. Amend section No. 6 of said bill by amending section 6 of said original bill as follows:

"That by deed dated 12th day of October, 1945, the said Herman Leffers undertook to deed the aobve described property, being section 18, township 43, south, range 24, east, to the Real Estate Exchange, Inc., a corporation under the laws of the State of Florida, defendant herein named; said deed being filed for record on the 12th day of October, 1945, and recorded in Deed Book 166, page 488 of the public [fol. 24] records of Lee County, Florida; that said deed from said Herman Leffers to the said Real Estate Exchange, Inc., a corporation, amounted only to an assignment of tax certificate No. 40, sale of 1940, of the above described land, section 18, township 43, south, range 24, east, together with the subsequent taxes paid by the defendant named in section 8 of said original bill of complaint.

3. Complainant further amends the 9th section of the original bill of complaint as follows:

"Whereas the complainant has paid into court the amount necessary to redeem tax certificate No. 40, sale of 1940, above referred to into the registry of this court, and has offered to pay the same to the clerk of the circuit court in full cancellation, discharge and redemption of said tax certificates, that said plaintiff further agrees to pay any further amounts which may be required by the court necessary to redeem the aforesaid tax certificates and subsequent taxes paid by any of the defendants herein, or as may be ascertained by the clerk of the court in and for Lee County, Florida, in the manner and form required by the owner of land under the statutes to redeem tax certificates held by an individual; and the complainant further prays the court to find that the successive conveyances above made amount only to an assignment of said tax certificates, together with the amount of subsequent taxes due and unpaid on the property, together with interest thereon as provided by statute. That in the event the amount of money which has been paid into court by this complainant for the discharge and payment of said tax lien is insufficient, this complainant stands ready, willing and able to pay such other additional amounts as the court may find due under the statute for the redemption of said tax certificate and subsequent taxes."

(Signed) W. B. Shelby Crichlow, Attorney for plaintiff.

[fol. 25] In Circuit Court, Lee County, Florida, In Chancery

[Title omitted]

Amendment To Lis Pendens—Filed June 15, 1946

Comes now the plaintiff in the above named cause and amends the original lis pendens filed herein by adding thereto the following named defendants, to-wit: D. T. Farabee, clerk circuit court, Lee County, Florida, and Real Estate Exchange, Inc., a corporation under the laws of the

State of Florida, and makes this amendment a part of the original lis pendens filed in this case.

(Signed) W. B. Shelby Crichlow, Attorney for *Defendant*. (Seal)

[fol. 26] In Circuit Court, Lee County, Florida, in Chancery

[Title omitted]

Amendment to Lis Pendens Heretofore Filed—Filed June 21, 1946

Comes now the plaintiff in the above named cause and amends the original lis pendens filed herein by adding thereto the following named defendants, to-wit: D. T. Farabee, clerk circuit court, Lee County, Florida, and Real Estate Exchange, Inc., a corporation under the laws of the State of Florida, and makes this amendment a part of the original lis pendens filed in this case.

(Signed) W. B. Shelby Crichlow, Attorney for the Plaintiff. (Seal.)

[fol. 27] In Circuit Court, Lee County, Florida. In Chancery

[Title omitted]

Praecipe for Summons to D. T. Farabee, et al.—Filed June 15, 1946

The Clerk of the said court will please issue its subpoenae, returnable as required by law, to the following defendants only: D. T. Farabee as clerk of circuit court for Lee County, Florida, and to the Real Estate Exchange, Inc., a corporation under the laws of the State of Florida, having its office located in Fort Myers, Florida, and deliver the same to the sheriff for service.

(Signed) W. B. Shelby Crichlow, Attorney for Complainant.

[fol. 28] IN CIRCUIT COURT, TWELFTH JUDICIAL CIRCUIT OF FLORIDA, LEE COUNTY, FLORIDA

[Title omitted]

SUMMONS AND RETURN ON D. T. FARABEE, ET AL.—Filed July 1, 1946

State of Florida

The State of Florida, To:

D. T. Farabee, as Clerk of the Circuit Court, Lee County, Florida, and Real Estate Exchange, Inc., a corporation under the laws of the State of Florida, Greetings:

You are hereby notified, that a suit has been brought against you in the Circuit Court for Lee County, Florida, in Chancery, by Fontaine LeMaistre, and you are hereby required to file with the Clerk of said Court your written appearance (personally or by attorney) in said suit on the first Monday in July A. D., 1946, being the 1st day of said month, and thereafter to file with said Clerk your written defenses, if any, to the bill of complaint in said suit at the time prescribed by law.

Herein fail not or judgment will be entered against you by default.

Witness my hand and seal of said Court, at Fort Myers, Florida, this 15th day of June, A. D. 1946.

D. T. Farabee, Clerk of said Circuit Court, by (Signed) A. N. Odom, Deputy Clerk. (Seal.)

Sheriff's Return

Came to hand this 15th day of June, 1946, and executed same in Lee County, Florida by delivering a true copy of this sunimons in chancery to the within named defendants, D. T. Farabee, as Clerk of the Circuit Court, and T. H. [fol. 29] Phillips, as President of Real Estate Exchange, Inc., a Corp. with the words "Copy of Summons in Chancery" written thereon, together with the name of complainant's solicitor, and at the same time exhibiting the original of such summons to such defendant.

This 17th day of June, 1946.

Floyd Ellis, Sheriff, Lee County, Florida, by (Signed) Bryant Baker, Deputy Sheriff.

Sheriff's Cost:

To Service	$4.00
To (2) Copy	.70
To Return	.25
To 4 Miles Traveled	.50
Total	$5.45

[fol. 30] In Circuit Court, Lee County, Florida. In Chancery

[Title omitted]

Notice to Herman Leffers, et al., of Amendment to Bill of Complaint—Filed June 21, 1946

To the defendants, Herman Leffers, W. H. Conrod and Sara Louise Conrod, his wife, take notice:

That on the 15th day of June, 1946 I filed an amendment to the original bill of complaint in the above entitled cause adding thereto D. T. Farabee as Clerk of the Circuit Court in and for Lee County, Florida, and Real Estate Exchange, Inc., a corporation under the laws of the State of Florida, having its principal office in Fort Myers, Florida, as defendants, and otherwise amending said bill of complaint as per copy of said amendments herewith enclosed and made a part hereof.

You will please take notice of the above and foregoing amendments and make such reply thereto as you may be advised is material on or by the rule day in July, 1946. Otherwise, a decree pro confesso will be entered against you and each of you.

(Signed) W. B. Shelby Crichlow, Attorney for the Plaintiff.

[fol. 31] AFFIDAVIT

STATE OF FLORIDA,
County of Manatee:

I, Harriett Weimer, do hereby certify that I did, on the 20th day of June, 1946, deposit in the United States Post Office at Bradenton, Florida, in the receptacle provided therefor by the Post Office Department of the United States, a full, true and correct copy of the amendment therein referred to, to each and every, severally, of the following parties at their respective addresses as shown below, a copy of the Notice and copy of the amendment being in each separate envelope with full letter postage prepaid, and addressed as follows, respectively:

Herman Leffers, Fort Myers, Florida.
W. H. Conrod, Alva, Florida.
Sara Louise Conrod, Alva, Florida.

(Signed) Harriett Weimer.

Sworn to and subscribed before me this 20th day of June, 1946. (Signed) Clara B. Balis, Notary Public, State of Florida at Large. My Commission expires August 15, 1947. Bonded by American Surety Co. of N. Y. (Notary Seal.)

[fol. 32] IN THE CIRCUIT COURT, IN AND FOR LEE COUNTY, FLORIDA, TWELFTH JUDICIAL COURT

[Title omitted]

ANSWER OF D. T. FARABEE—Filed June 26, 1946

Now come the Defendant, D. T. Farabee, Clerk Circuit Court, Lee County, Florida, for answer to bill of Complaint, and says that he has no interest in the controversy, and asks the court to dismiss this defendant as an improper party.

(Signed) D. T. Farabee, Defendant.

[fol. 33] IN CIRCUIT COURT, LEE COUNTY, FLORIDA. IN CHANCERY

[Title omitted]

NOTICE TO HERMAN LEFFERS, ET AL., OF AMENDMENT TO BILL OF COMPLAINT—Filed July 1, 1946

To the defendants, Herman Leffers, W. H. Conrod and Sara Louis Conrod, his wife, take notice:

That on the 15th day of June, 1946 I filed an amendment to the original bill of complaint in the above entitled cause adding thereto D. T. Farabee as Clerk of the Circuit Court in and for Lee County, Florida, and Real Estate Exchange, Inc, a corporation under the laws of the State of Florida, having its principal office in Fort Myers, Florida, as defendants, and otherwise amending said bill of complaint as per copy of said amendments herewith enclosed and made a part hereof.

You will please take notice of the above and foregoing amendments and make such reply thereto as you may be advised is material on or by the rule day in July, 1946. Otherwise, a decree pro confesso will be entered against you and each of you.

(Signed) W. B. Shelby Crichlow, Attorney for the Plaintiff.

(Copy of the Amendments to the original Bill of Complaint were attached to the aforesaid notice.)

[fol. 34] IN CIRCUIT COURT, LEE COUNTY, FLORIDA. IN CHANCERY

FONTAINE LEMAISTRE, Plaintiff,

vs.

HERMAN LEFFERS, et als., Defendants

Bill to Redeem, for Accounting and Injunction

AFFIDAVIT

I, Harriett Weimer, do hereby certify that I did, on the 22nd day of June, 1946, register at the United States Post Office, Bradenton, Florida, a full, true and correct copy

of the amendment therein referred to, to each and every, severally, of the following parties at their respective addresses as shown below, a copy of the Notice and copy of the amendment being in each separate envelope with full letter postage plus registry fee prepaid, and addressed as follows, respectively:

W. H. Conrod, Alva, Florida.
Sara Louise Conrod, Alva, Florida.

Return registered receipts therefor by the addresses have been received by me.

(Signed) Harriett Weimer.

Sworn and subscribed before me this 28th day of June, 1946. (Signed) Clara B. Balis, Notary Public, State of Florida at Large. My commission expires August 15, 1947. Bonded by American Surety Co. of N. Y. (Notarial Seal.)

[fol. 35] In Circuit Court, Lee County, Florida. In Chancery

[Title omitted]

Plaintiff's Notice of Hearing of Motion to Dismiss—July 1, 1946

Comes now the plaintiff in the above entitled cause and sets down for hearing upon due notice to respective parties, plaintiff and defendants, at date to be fixed by Honorable George W. Whitehurst, one of the Judges of said Court, a motion of the Sun Oil Coompany, a defendant, to dismiss.

(Signed) W. B. Shelby Crichlow, Attorney for Plaintiff.

[fol. 36] In Circuit Court, Lee County, Florida. In Chancery

[Title omitted]

Plaintiff's Notice of Hearing on Motion to Make More Particular—Filed July 1, 1946

Comes now the plaintiff in the above entitled cause and sets down for hearing upon due notice to respective parties, plaintiff and defendants, at date to be fixed by Honorable George W. Whitehurst, one of the Judges of said Court, a motion of the Sun Oil Company, a defendant, to make more particular.

(Signed) W. B. Shelby Crichlow, Attorney for Plaintiff.

[fol. 37] In Circuit Court, Lee County, Florida. In Chancery

[Title omitted]

Praecipe for Decree Pro Confesso Against Herman Leffers, et al.—Filed July 1, 1946

The Clerk of said Court will please enter a decree pro confesso against Herman Leffers, W. H. Conrod and Sara Louise Conrod, defendants in the above entitled cause, for their failure to plead to the bill of complaint as amended filed in the above stated cause.

(Signed) W. B. Shelby Crichlow, Attorney for Plaintiff.

[fol. 38] IN CIRCUIT COURT, LEE COUNTY, FLORIDA. IN CHANCERY

[Title omitted]

PRAECIPE FOR DECREE PRO CONFESSO AGAINST D. T. FARABEE, ET AL.—Filed July 1, 1946

The Clerk of said Court will please enter a decree pro confesso against the following named defendants in the above entitled cause for their failure to enter appearance in said cause on the rule day in July, 1946, as follows:

1. D. T. Farabee, as Clerk of the Circuit Court for Lee County, Florida.

2. Real Estate Exchange, Inc., a corporation under the laws of the State of Florida.

(Signed) W. B. Shelby Crichlow, Attorney for Plaintiff.

[fol. 39] IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR LEE COUNTY. IN CHANCERY.

[Title omitted]

APPEARANCE OF REAL ESTATE EXCHANGE, INC.—Filed July 1, 1946

The Clerk of the above styled Court will please enter the Appearance of Real Estate Exchange, Inc., a corporation, on the Rule Day in July, 1946, to wit: July 1, 1946, and oblige.

Henderson, Franklin, Starnes & Holt, by (Signed) F. E. Starnes, as Attorneys for Real Estate Exchange, Inc. F. E. Starnes of Counsel.

[fol. 40] IN CIRCUIT COURT, LEE COUNTY, FLORIDA. IN CHANCERY

[Title omitted]

STIPULATION RE MOTIONS—Filed July 22, 1946

It is stipulated and agreed by and between the undersigned solicitors of record for Fontaine LeMaistre, Plaintiff, and Sun Oil Company, Defendant, that the motion to dismiss and the motion for better particulars, filed in the above styled case on behalf of the defendant, Sun Oil Company, directed to the original Bill of Complaint may be considered by the Court as directed to the Bill of Complaint as Amended without additional pleadings to the Bill of Complaint as Amended until the further order of the Court.

This 12th day of July, A. D. 1946.

(Signed) W. B. Shelby. Crichlow, Attorney for Plaintiff; Osmond Bie, Attorney for Defendant, Sun Oil Company.

[fol. 41] IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR LEE COUNTY. IN CHANCERY.

[Title omitted]

MOTION OF REAL ESTATE EXCHANGE, INC., TO DISMISS BILL OF COMPLAINT—Filed July 26, 1946

Comes now Real Estate Exchange, Inc., a corporation under the laws of the State of Florida, one of the Defendants herein pursuant to the Amendment filed by Plaintiff on June 15, 1946, and moves the Court to dismiss the Bill of Complaint herein, said Motion being based upon the following grounds severally, to-wit:

1. Said Bill of Complaint contains no equity.

2. It does not appear from the Bill of Complaint that Plaintiff is the owner of, or has any interest in, the lands described in the Bill of Complaint.

3. It does not appear from said Bill of Complaint what interest of Plaintiff, if any, is in and to the lands described in the Bill of Complaint.

4. It does not appear from the Bill of Complaint that the lands described in the Bill of Complaint are of the type referred to in the Soldiers and Sailors Civil Relief Act of 1940.

[fol. 42] 5. No facts are alleged as to the type of the lands described in the Bill of Complaint, nor the use made of said lands.

6. Pursuant to provisions of the Acts of Congress for the protection of the rights of Soldiers and Sailors during time of military or naval service, only lands used as a residence, for business or agricultural purposes are protected from sale for non-payment of taxes, and it does not appear that the lands described in the Bill of Complaint come within the type of lands protected by such Acts of Congress.

Henderson, Franklin, Starnes & Holt, by (signed) J. A. Franklin, Solicitors for Real Estate Exchange, Inc., a corporation. J. A. Franklin of Counsel.

[fol. 43] In Circuit Court, Lee County, Florida. In Chancery

[Title omitted]

Amendments to Bill of Complaint—Filed November 1, 1946

Comes now the plaintiff in the above entitled cause and amends his bill of complaint filed herein on the 25th day of March, 1946, as follows:

First Amendment. Although the ownership of the plaintiff of the lands sought to be redeemed is specifically alleged in the concluding words of section numbered "8" of said bill of complaint, for reason of greater certainty of the allegation of ownership, section numbered "4" of said bill of complaint is amended *by striking from the second sentence of said section numbered "4"* the words,

"in the name of the plaintiff, Fontaine LeMaistre" and by adding a new paragraph at the end of said section numbered "4" as follows:

"The assessment of said property as shown on the face of said tax certificate was in the name of Fontaine Le-

Maistre as owner thereof. That said property was at the time and has since been owned by the said plaintiff in fee simple from and since the 15th day of February, 1923, as appears by deed to him filed for record May 23, 1923, and recorded in Deed Book 65 on page 527 of the public records of Lee County, Florida.

[fol. 44] "A certified copy of the aforesaid tax deed, recorded in Deed Book 148 at page 135, public records of Lee County, Florida, is hereto attached marked Exhibit A and made a part of this amended bill of complaint."

(Signed) W. B. Shelby Crichlow, Attorney for Plaintiff.

[fol. 45] EXHIBIT "A" TO AMENDMENT

Tax Deed

(Senate Bill No. 163)

STATE OF FLORIDA,
County of Lee:

Know All Men By These Presents: That whereas, Tax Certificates No. 19 & No. 20, issued the 5th day of August, 1940 were duly filed in the office of the Clerk of the Circuit Court of this county and application made for the issuance of a tax deed based thereon; and the applicant having paid or redeemed all other taxes on the lands hereinafter described required by law to be paid or redeemed, and the costs and expenses of this sale; and due notice of sale having been published as required by law, and no person entitled so to do having appeared to redeem said land, such land was on the 1st day of March, 1943, offered for sale at the Courthouse door for cash to the highest bidder, and was then and there struck off and sold to W. H. Conrod, he being the highest bidder for the same and having paid the sum of his bid;

Therefore, the State of Florida, in consideration of the premises, and in consideration of the sum of ($55.00) Fifty-five & no/100 dollars and the sum of ($150.00) One Hundred Fifty & No/100 dollars, respectively, being the amount paid upon the said tax certificate and for costs and charges, and

in pursuance of the statute in such cases made and provided, has given, granted, bargained and sold, and does hereby give, grant, bargain and sell, convey to the said W. H. Conrod and to his heirs and assigns forever, to their own proper use, benefit and behoof the following land situated in the county and state aforesaid, and described as follows:

N½ Sec. 6 T. 43 S. R. 24 E and All Sec. 18 T. 43 S. R. 24 E, respectively

Containing 900 acres, more or less, provided, however, that said land shall continue subject and liable for any unpaid taxes thereon.

[fol. 46] In Testimony Whereof, by virtue of authority in me vested by law, and for and on behalf of the State of Florida, I, the undersigned, as Clerk of the Circuit Court for the County and State aforesaid, have executed this deed and have thereunto set my official signature and seal, at Fort Myers, in the county of Lee, and State of Florida, this the 1st day of March, A. D. 1943.

(Signed) D. T. Farabee, Clerk of Circuit Court Lee County, Florida. (Seal.)

Signed, sealed and delivered in the presence of: A. N. Odom, Eula Hussey. (Seal affixed.)

STATE OF FLORIDA,
County of Lee:

On this 1st day of March, A. D. 1943, before me a Notary Public personally appeared D. T. Farabee Clerk of the Circuit Court in and for the State and County aforesaid, to me known to be the person described in, and who executed the foregoing instrument, and acknowledged the execution thereof to be his own free act and deed for the use and purposes therein mentioned.

Witness my hand and official seal the date aforesaid.

A. J. Kay, Notary Public State of Florida at large. My Commission expires April 28, 1944. (Notary Public Seal Affixed.)

STATE OF FLORIDA,
County of Lee:

On this 1st day of March, A. D. 1943, before me D. T. Farabee Clerk of the Circuit Court in and for the County and State aforesaid, personally appeared A. N. Odom to me known to be one of the subscribing witnesses to the foregoing instrument, who, being duly sworn, deposes and says that D. T. Farabee Clerk of the Circuit Court in and for County and State aforesaid, to him well known, did, in his presence sign, seal and deliver the foregoing instrument [fol. 47] of writing for the purposes therein mentioned, and that Eula Hussey did in his presence witness the same, and that he and the said other witness did attest the same as witnesses in the presence of each other.

Sworn to and subscribed before me this the 1st day of March, A. D. 1943. A. N. Odom. (Seal Affixed.)

D. T. Farabee, Clerk Circuit Court Lee County.

Filed and duly recorded this the 4th day of March A. D. 1943. D. T. Farabee Clerk Circuit Court by Ruth Andersen D. C.

STATE OF FLORIDA,
County of Lee:

I, D. T. Farabee, Clerk of the Circuit Court in and for Lee County, Florida, do hereby certify that the above and foregoing, is a true and corect copy of Deed from D. T. Farabee, Clerk Circuit Court, Lee County, Florida, to W. H. Conrod, dated March 1st, 1943, as the same now appears of record in Deed Book No. 148 at page 135, among the public records of Lee County, Florida.

Witness my hand and the seal of said Court at Fort Myers, Florida, this the 30th day of November, A. D. 1945.

D. T. Farabee, Clerk Circuit Court (signed) by A. N. Odom, Deputy Clerk. (Official Seal.)

[fol. 48] STATE OF FLORIDA,
County of Manatee:

Donna Douglas came before me this day and on her oath says that she is secretary for Mr. W. B. Shelby Crichlow, attorney for the plaintiff in the above entitled cause; that she did on the 30th day of October 1946, mail a full, true and

complete copy of the amended bill of complaint and exhibit hereto attached, to each of the defendants in this suit at their respective addresses as follows:

Mr. W. H. Conrod, Alva Florida,
Mrs. Sara Louise Conrod, Alva, Florida,
Herman Leffers, Fort Myers, Florida,
Mr. Osmond Bie, Attorney for Sun Oil Co., Post Office Box 186, Tallahassee, Florida,
Henderson, Franklin, Starnes, and Holt, Collier Building, Fort Myers, Florida, Attorneys for Real Estate Exchange, Inc., a corporation,

That a copy of the above and foregoing amendments with a copy of the tax deed thereto attached, was placed in an envelope addressed respectively to each and every of the aforesaid parties; which envelope was securely sealed with full letter postage prepaid and was deposited by me in the United States Post Office, at Bradenton, Florida, in the receptacle provided in said post office for outgoing mail, which envelopes were so deposited on the 30th day of October, 1946.

(Signed) Donna Douglas.

Sworn to and subscribed before me this 30th day of October, 1946. (Signed) Clara B. Ballis, Notary Public State of Florida at large. My commission expires August 15, 1947. Bonded by American Surety Co. of N. Y. (Notarial Seal.)

[fol 49] In the Circuit Court of the Twelfth Judicial Circuit of the State of Florida in and for Lee County. In Chancery

[Title omitted]

Motion of Real Estate Exchange, Inc., to Dismiss Amended Bill of Complaint—Filed November 4, 1946

Comes now the Defendant, Real Estate Exchange, Inc., a corporation under the laws of Florida, and moves the Court to Dismiss the Bill of Complaint herein, as amended, upon the following grounds severally:

1. Said Bill of Complaint is without equity.

2. The matters alleged in said Bill of Complaint, as amended, do not entitle Plaintiff to relief.

3. The said Bill of Complaint, as amended, does not allege that the property described therein was occupied for dwelling, professional, business or agricultural purposes by the Plaintiff or his dependants at the commencement of Plaintiff's period of military service and that the said real estate is still so occupied.

4. It is apparent upon the face of the Bill of Complaint, as amended, that the property involved is wild, unimproved land and not within the purview of Acts of Congress protecting men in the military service.

Henderson, Franklin, Starnes & Holt by (signed) J. A. Franklin, Attorneys for Real Estate Exchange, Inc.

[fol. 50] IN THE CIRCUIT COURT IN AND FOR LEE COUNTY, FLORIDA, IN CHANCERY

[Title omitted]

ORDER SUSTAINING MOTION OF REAL ESTATE EXCHANGE, INC., TO DISMISS BILL OF COMPLAINT AS AMENDED—November 15, 1946

This cause coming on this day to be heard upon the Motion of Real Estate Exchange, Inc., one of the defendants herein, for an Order dismissing the Bill of Complaint, as amended, and the said Motion having been argued by counsel for the respective parties and the Court being advised in the premises, it is thereupon,

Ordered, Adjudged and Decreed that said Motion to Dismiss the Bill of Complaint, as amended, be and the same is hereby granted.

Plaintiff is given thirty days to amend as he may be advised, and Defendants are allowed twenty days after being served with any amended Bill of Complaint within which to plead thereto.

Done and Ordered at Fort Myers, Florida, this 15th day of November, A. D. 1946.

(Signed) Geo. W. Whitehurst, Circuit Judge.

[fol. 51] IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR LEE COUNTY. IN CHANCERY

[Title omitted]

MOTION OF SUN OIL CO. TO DISMISS AMENDED BILL OF COMPLAINT—Filed November 15, 1946

Comes now the Defendant, Sun Oil Company, a corporation under the laws of New Jersey, and moves the Court to Dismiss the Bill of Complaint herein, as amended, upon the following grounds severally:

1. Said Bill of Complaint is without equity.

2. The matters alleged in said Bill of Complaint, as amended, do not entitle Plaintiff to relief.

3. The said Bill of Complaint, as amended, does not allege that the property described therein was occupied for dwelling, professional, business or agricultural purposes by the Plaintiff or his dependants at the commencement of Plaintiff's period of military service and that the said real estate is still so occupied.

4. It is apparent upon the face of the Bill of Complaint, as amended, that the property involved is wild, unimproved land and not within the purview of Acts of Congress protecting men in the military service.

(Signed) Osmond Bie.

[fol. 52] IN CIRCUIT COURT OF LEE COUNTY

In Circuit Court, Lee County, Florida. In Chancery

FONTAINE LEMAISTRE, Plaintiff,

v.

HERMAN LEFFERS, et als., Defendants

FINAL DECREE—December 13, 1946

This cause having come on to be heard upon motion of two of the defendants for an order to dismiss the plaintiff's bill of complaint as amended for want of equity, and the court having entered an order on the 15th day of November, 1946, granting said motions with leave to the plaintiff

to further amend his said bill of complaint within thirty days, as he may be advised, and the plaintiff having announced to the court that he refused to further amend said bill of complaint,

It Is Ordered, Adjudged and Decreed that the said bill of complaint as amended be and the same is hereby dismissed.

Done and Ordered at Bradenton, Florida, this 12th day of December, 1946.

(Signed) Geo. W. Whitehurst, Circuit Judge.

[fol. 53] In Circuit Court of Lee County

[Title omitted]

Notice of Appeal—Filed February 1, 1947.

The Plaintiff, Fontaine LeMaistre, takes and enters his appeal to the Supreme Court of Florida to review the order, judgment or decree of the Circuit Court for Lee County, Florida, in chancery, bearing date of the 12 day of December, 1946, entered in the above styled cause and recorded in the records of said Court in chancery order book 23 at page 293, and all parties to said cause are called upon to take notice of the entry of this appeal.

(Signed) W. B. Shelby Crichlow, Attorney for Fontaine LeMaistre, Plaintiff.

[fol. 54] In Circuit Court of Lee County

[Title omitted]

Assignment of Errors—Filed February 7, 1947

Comes now the Appellant, Fontaine LeMaistre, Plaintiff below, and assigns the following errors on grounds for the appeal from the judgment and decree of the court below entered in Chancery Order Book Number 23 at Page 293 of the records of said Circuit Court.

1. The Court erred in entering its order dated December 12, 1946, recorded in Chancery Order Book 23 at Page 293 in dismissing Plaintiff's Bill of Complaint as amended.

2. The Court erred in entering its order or decree dated the 15th day of November, 1946, in granting motion of the Real Estate Exchange, Incorporated, for an order dismissing the Plaintiff's Bill of Complaint as amended.

(Signed) W. B. Shelby Crichlow, Attorney for Fontaine LeMaistre, Plaintiff.

[fol. 55] AFFIDAVIT OF MAILING ASSIGNMENT OF ERRORS

I, Mary Lee Engberg, do hereby certify that I did, on the 5th day of February, 1947, register at the United States Post Office, Bradenton, Florida, a full, true and correct copy of Assignment of Errors to Osmond Bie, Post Office Box 186, Tallahassee, Florida, as Attorney for Sun Oil Company, a corporation, and another full, true and correct copy of aforesaid Assignment of Errors to Henderson, Franklin, Starnes and Holt, Collier Building, Fort Myers, Florida, as Attorneys for the Defendant, Real Estate Exchange, Incorporated, a corporation placing aforesaid papers in separate envelopes securely sealed, with full letter postage paid, properly addressed as aforesaid, and deposited so addressed, in the United States Post Office at Bradenton, Florida.

(Signed) Mary Lee Engberg.

Sworn and subscribed before me this 5th day of February, 1946. (Signed) Clara B. Balis, Notary Public, State of Florida at Large. My Commission expires August 15, 1947. Bonded by American Surety Co. of N. Y. (N. P. Seal Affixed.)

[fol. 56] IN CIRCUIT COURT OF LEE COUNTY

[Title omitted]

WRITTEN DIRECTIONS TO THE CLERK FOR MAKING UP RECORD —Filed February 7, 1947

The Clerk of the Circuit Court in and for Lee County, Florida, in chancery, will please make up and certify a transcript of record reciting therein the following papers and documents appearing in the above styled cause, to wit:

1. The Bill of Complaint filed 25th day of March, 1946.
2. Summons in Chancery issued March 25, 1946.

3. Lis Pendens filed and recorded March 25, 1946.

4. A receipt of Clerk of Circuit Court for deposit of $163.24 in the Registry of the Court by Plaintiff, filed March 25, 1946.

5. Notice of application for injunction filed March 25, 1946.

[fol. 57] 6. Order granting injunction filed March 30, 1946.

7. Summons in Chancery issued to Defendant, Sun Oil Company, 6th day of April, 1946.

8. Return of Sheriff on Summons issued March 25, 1946, filed April 30, 1946.

9. Sheriff's return on Summons issued April 6, 1946, filed April 30, 1946.

10. Appearance entered of Sun Oil Company, filed May 4, 1946.

11. Praecipe for Decree Pro Confesso filed May 6, 1946.

11a Certified Copy Decree Pro Confesso filed May 7, 1946.

12. Praecipe for Decree Pro Confesso filed June 3, 1946.

13. Motion to Make More Particular filed June 3, 1946.

14. Motion to Dismiss Bill of Complaint filed June 3, 1946.

15. Amendments to Bill of Complaint filed June 15, 1946.

16. Amendments to Lis Pendens filed and recorded June 15, 1946.

17. Praecpe for Summons filed 15, 1946.

18. Summons in Chancery issued June 15, 1946, with the Sheriff's return noted thereon, filed July 1, 1946.

19. Proof of Notice of Amendment to the Bill of Complaint to the Defendants, Herman Leffers, W. H. Conrod and Sara Louise Conrod, filed June 21, 1946.

20. Amendment of Lis Pendens filed and recorded the 21st day of June, 1946.

21. Answer of Defendant, D. T. Farabee, Clerk, filed 26th day of June, 1946.

22. Proof of Notice of Amendments to the Bill of Complaint to Herman Leffers, W. H. Conrod and Sara Louise Conrod, filed July 1, 1946.

[fol. 58] 23. Setting Down for Hearing Motion of the Sun Oil Company to Dismiss, filed July 1, 1946.

24. Setting Down for Hearing Motion of the Sun Oil Company to Make More Particular, filed July 1, 1946.

25. Praecipe for Decree Pro Confesso, July 1, 1946.

26. Praecipe for Decree Pro Confesso against Herman Leffers, W. H. Conrod and Sara Louise Conrod, filed July 1, 1946.

27. Praecipe for Decree Pro Confesso against D. T. Farabee as Clerk of Circuit Court, and Real Estate Exchange, Inc., filed July 1, 1946.

28. Appearance of Defendant, Real Estate Exchange, Inc., filed July 1, 1946.

29. Stipulation filed July 22, 1946.

30. Motion to Dismiss Bill of Complaint by Real Estate Exchange, Inc., filed July 26, 1946.

31. Amendments to Bill of Complaint and Proof of Mailing Copies of Amendments to each Defendant, filed November 1, 1946.

32. Motion to Dismiss Amended Bill of Complaint by Real Estate Exchange, Inc., filed November 4, 1946.

33. Order granting Motion to Dismiss Bill of Complaint as Amended, filed and recorded November 15, 1946.

34. Motion of Sun Oil Company to Dismiss Amended Bill of Complaint, filed November 15, 1946.

35. Final Decree filed and recorded the 13th day of December, 1946, dismissing Bill of Complaint as Amended.

36. Notice of Appeal to the Supreme Court of Florida, filed February 1, 1947.

37. Assignment of Errors by the Appellant-Plaintiff, below.

38. Written Directions to the Clerk for making up transcript.

[fol. 59] 39. Proof of Service of Copy of Written Directions to Clerk on Defendants, Real Estate Exchange, Inc., a corporation, and Sun Oil Company, a corporation.

40. Proof of Service of Copy of Assignment of Errors on Defendants Real Estate Exchange, Inc., a corporation and Sun Oil Company, a corporation.

The Clerk is directed to omit all other papers filed in this cause excepting such other papers as may be designated by the Appellees or some of them, Defendants below. The Clerk shall conform to the Rules of the Supreme Court in making up this transcript of the record in this cause. The aforesaid transcript shall be prepared by the Attorney for the Plaintiff and certified by the Clerk. The Appellees shall, within ten days of service of a copy of the Assign-

ment of Errors and these written directions to the Clerk, file such cross assignment of errors and additional written directions to the Clerk as they may be advised.

(Signed) W. B. Shelby Crichlow, Attorney for Fontaine LeMaistre, Plaintiff-Appellant.

[fol. 60] AFFIDAVIT OF MAILING WRITTEN DIRECTIONS TO THE CLERK

I, Mary Lee Engberg, do hereby certify that I did, on the 5th day of February, 1947, register at the United States Post Office, Bradenton, Florida, a full, true and correct copy of Written Directions to the Clerk, to Osmond Bie, Post Office Box 186, Tallahassee, Florida, as Attorney for Sun Oil Company, a corporation, and another full, true and correct copy of aforesaid Written Directions to the Clerk, to Henderson, Franklin, Starnes and Holt, Collier Building, Fort Myers, Florida, as Attorneys for the Defendant, Real Estate Exchange, Incorporated, a corporation, placing aforesaid papers in separate envelopes securely sealed, with full letter postage paid, properly addressed as aforesaid, and deposited so addressed, in the United States Post Office at Bradenton, Florida.

(signed) Mary Lee Engberg.

Sworn and subscribed before me this 5th day of February, 1946.

(signed) Clara B. Balis, Notary Public, State of Florida at Large. My Commission expires August 15, 1947. (N. P. Seal Affixed) Bonded by American Surety Co. of N. Y.

[fol. 61] IN CIRCUIT COURT OF LEE COUNTY

(Title Omitted)

WRITTEN DIRECTIONS TO THE CLERK BY APPELLEE, SUN OIL COMPANY—Filed Feb. 13, 1947

The Clerk of Circuit Court in and for Lee County, Florida in Chancery, will please include in the Transcript of Record on appeal the following matter:

1. Certificate of the Clerk showing whether or not the Plaintiff in the suit below, Appellant here, has paid all costs which have accrued, in or about the suit, up to the time this appeal was taken.

2. These Directions.

(signed) Osmond Bie, Attorney for Sun Oil Company.

[fol. 62] PROOF OF SERVICE OF NOTICE

I, Margo Brown, do hereby certify that I did, on the 11th day of February, 1947, register at the United States Post Office, Tallahassee, Florida, a full, true and correct copy of the above written Directions to the Clerk, to W. B. Shelby Crichlow, Attorney-at-law, Bradenton, Florida, as Attorney for the Appellant, Fontaine LeMaistre, by depositing the same in the United States mail in an envelope securely sealed, addressed as above, and with sufficient postage thereon to insure delivery.

(Signed) Margo Brown.

Sworn and subscribed before me this 11th day of February, 1947.

(signed) Marie H. Bower, Notary Public-State Florida at Large. My Commission expires Nov. 16, 1947 (Notarial Seal)

[fols. 63-64] Clerk's Certificate to Costs and to foregoing transcript omitted in printing.

[fol. 65] IN THE SUPREME COURT OF FLORIDA

FONTAINE LEMAITRE, Appellant,

v.

HERMAN LEFFERS, W. H. CONROD and SARA LOUISE CONROD, his wife, the Sun Oil Company, a corporation under the laws of the State of New Jersey, D. T. Farabee as Clerk of the Circuit Court of Lee County, Florida, and Real Estate Exchange, Incorporated, a corporation under the laws of the State of Florida, Appellees.

PETITION FOR AND ORDER EXTENDING TIME FOR FILING TRANSCRIPT OF RECORD IN SUPREME COURT—Filed March 11, 1947

To the Honorable W. T. Harrison, one of the Judges of the Circuit Court of Lee County, Florida, in Chancery:

Comes now the Appellant, Fontaine LeMaitre, in the above entitled cause, and petitions the Court for the entry of an order without notice extending the time for filing the transcript of record from the Circuit Court of Lee County, Florida, in the Supreme Court of Florida from and after the 12th day of March, 1947 to and including the 22nd day of March, 1947, agreeable to Rule 12(b) of said Supreme Court. The appeal herein was filed in the office of the Clerk of the Circuit Court of Lee County, Florida, on the first day of February, 1947.

(signed by) W. B. Shelby Crichlow, Attorney for Appellant.

[fol. 66] ORDER EXTENDING TIME OF FILING TRANSCRIPT TO AND INCLUDING MARCH 22ND, 1947

The above petition coming on to be heard before me this day, it is ordered that Appellant is allowed an extension of ten days from and after the 12th day of March, 1947, to and including the 22nd day of March, 1947, within which to file the transcript of record on appeal in this cause in the Supreme Court of Florida.

Done and ordered at Bradenton, Florida, this 10th day of March, 1947.

(Signed) By W. T. Harrison, Circuit Judge.

State of Florida, County of Manatee:

I, W. T. Harrison, one of the Judges of the Circuit Court in and for Lee County, Florida, in Chancery, do hereby certify that I did on the 10th day of March, 1947, enter the above and foregoing order agreeable to Rule 12(b) of the Supreme Court of Florida, extending the time to March 22nd, 1947, for filing the transcript of record in said Cause in said Supreme Court.

In Testimony Whereof I have hereunto set my hand at Bradenton, Florida, this 10th day of March, 1947.

(Signed) By W. T. Harrison, Circuit Judge.

[fol. 67] Affidavit

STATE OF FLORIDA,
County of Manatee:

I, Mary Lee Engberg, do hereby certify that I did on this 20th day of March, 1947, deposit in the United States Post Office in the receptacle for outgoing mail, a full, true and complete copy of the foregoing transcript of record in the case of LeMaistre v. Leffers, Etals, in an envelope securely sealed and with full letter postage prepaid, addressed to: Osmond Bie, Post Office Box 186, Tallahassee, Florida, as Attorney for Sun Oil Company, and

I further certify that I, on this 20th day of March, 1947, deposited in the United States Post Office in the receptacle for outgoing mail, a full, true and complete copy of the foregoing transcript of record in the case of LeMaistre v. Leffers, Etals, in an envelope securely sealed and with full letter postage prepaid, addressed to: Henderson, Franklin, Starnes and Holt, Collier Building, Fort Myers, Florida, as Attorneys for Real Estate Exchange, Incorporated.

(S) Mary Lee Engberg.

Sworn to and subscribed before me this 20th day of March, 1947. Clara B. Balis, Notary Public. My commission expires August 15, 1947. (N. P. Seal)

[fol. 68] IN THE SUPREME COURT OF FLORIDA

FONTAINE LEMAISTRE, Appellant,

vs.

HERMAN LEFFERS, et als., Appellees

OPINION—Filed June 24, 1947

An appeal from the Circuit Court for Lee County, George W. Whitehurst, Judge.

PER CURIAM:

The record and the briefs in this cause have been examined and the judgment appealed from is affirmed on authority of DeLoach et al vs. Calihan, decided March 21, 1947.

Thomas, C. J., Burford, Adams, and Barnes, J. J., concur.

[fol. 69] IN SUPREME COURT OF FLORIDA

MANDATE FROM SUPREME COURT—July 11, 1947

To the Honorable, the Judge of the Circuit Court for the Twelfth Judicial Circuit of Florida, Greeting:

Whereas, lately in the Circuit Court of the Twelfth Judicial Circuit of Florida, in and for the County of Lee in a cause wherein Fontaine LeMaistre was plaintiff aand Herman Leffers and Estelle Leffers, his wife, W. H. Conrod and Sara Louise Conrod, his wife, and the Sun Oil Company, a corporation under the laws of the State of New Jersey, were defendants, the Decree of said Circuit Court was rendered Dec. 12, 1946 as by the inspection of the transcript of the record of the said Circuit Court which was brought into the Supreme Court of the State of Florida, by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears:

And Whereas, at the June Term of said Supreme Court holden at Tallahassee, A. D. 1947, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel, in consideration whereof, on the 24th day of June A. D. 1947 it was considered by said Supreme Court that the said Decree of the Circuit Court be and the same is hereby affirmed: it is

further ordered by the Court that the Appellees do have and recover of and from the Appellant their costs by them in this behalf expended, which costs are taxed at the sum of —— Dollars; therefore

[fol. 70] You Are Hereby Commanded, that such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court, and the Laws of the State of Florida, ought to be had, the said Decree of the Circuit Court notwithstanding.

Witness, The Honorable Elwyn Thomas, Chief Justice of said Supreme Court, and the seal of said Court at Tallahassee, this 11th day of July 1947.

Guyte P. McCord, Clerk, Supreme Court of Florida. (Seal)

IN THE SUPREME COURT OF FLORIDA, JANUARY TERM, A. D. 1947

Division A

BARNEY H. DELOACH and A. K. HAWKINS, Petitioners,

vs.

LYNN C. CALIHAN, Respondent

OPINION IN CASE CITED IN OPINION IN CASE AT BAR

Opinion filed March 21, 1947.

A Writ of Certiorari to the Circuit Court for Manatee County, W. T. Harrison, Judge.

Knowles & Kirk and Henderson, Franklin, Starnes & Holt, for Petitioners.

Robert E. Wills, for Respondent.

TERRELL, J.

On May 14, 1938, Lynn C. Calihan purchased lot 8 Block C of High School Addition to the City of Manatee, Florida. He did not pay the taxes on this property, so tax certificate No. 1308 was issued against it July 7, 1941. Calihan en- [fol. 71] listed in the Armed Forces November 17, 1943. January 3, 1944, Tax deed was issued to Atlantic Municipal Corporation on the basis of said certificate. April 2, 1945, Atlantic Municipal Corporation conveyed the said lot to

A. K. Hawkins, who in turn, five days later, conveyed it to Barney H. DeLoach.

Calihan was discharged from the Armed Forces February 3, 1946, and on May 2, following, instituted this suit in chancery alleging that on account of being in the Armed services "at the time of the application for and issuance of such purported tax deed and other purported deeds heretofore set out, the said purported tax deed and other purported deeds are voidable and complainant is entitled to their cancellation." The bill prayed for cancellation of the deeds and an accounting for rents received during the occupancy of the lands. A motion to dismiss was denied and that order is here for review on certiorari.

The chancellor denied the motion to dismiss on authority of Section 525, Soldiers' and Sailors' Civil Relief Act, the pertinent part of which is as follows:

> "nor shall any part of such period which occurs after the date of the enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 be included in the computing of any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment."

The chancellor supported his order overruling the motion to dismiss by Illinois National Bank of Springfield vs. Gwinn, — Ill. —, 61 N. E. (2) 249.

Petitioners counter with the contention that respondent has not brought himself within the protection of Section 560, Soldiers' and Sailors' Civil Relief Act, the pertinent part of which is as follows:

> [fol. 72] "(1) The provisions of this section shall apply when any taxes or assessments, whether general or special (other than taxes on income), whether falling due prior to or during the period of military service, in respect of personal property, money, or credits, or real property owned and occupied, for dwelling, professional, business, or agricultural purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees are not paid."

In the Illinois case cited and relied on by the chancellor, the Court held that the provisions of Section 525, Soldiers' and Sailors' Civil Relief Act, were written into the State statute and extended the period for redemption to those in the Armed services so long as they were in the service.

Petitioners contend on the contrary that the law in effect at the time the tax certificate was issued controls the issuance of the tax deed; that the Soldiers' and Sailors' Civil Relief Act was passed after the issuance of the tax certificate in question and should not be construed as modifying the certificate holders contract under the law. It is also contended that if there is conflict between Sections 525 and 560, Soldiers' and Sailors' Civil Relief Act, the language of the latter section must prevail and be given effect as the will of the legislature.

In our view, Section 560, Soldiers' and Sailors' Civil Relief Act defines the standard by which a soldier or sailor may know the class of property on which he is granted indulgence thereunder, and section 525 puts him on notice of the period of indulgence. As to real estate, the indulgence is limited to that "owned and occupied for dwelling, professional, business or agricultural purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees are not paid."

[fol. 73] Since these are the conditions under which one may avail himself of the provisions of the Soldiers' and Sailors' Civil Relief Act, we think it necessary that respondent allege facts in his bill of complaint to bring him within the terms of the statute. Since the Act covers taxes "falling due prior to or during the period of military service" it must have the effect of extending the period of redemption for all such lands as are brought within its terms.

If respondent alleges facts sufficient to bring him within the terms of the act he may redeem as the State Statute for redemption provides. In this case it appears that Caliban entered the Armed services long after the tax certificate was issued. Is that material?

If he cannot allege facts to bring him within the terms of the Soldiers' and Sailors' Civil Relief Act, then he is entitled to no protection under it. We think he failed to make a sufficient showing of the character of the use and occupancy of the property as defined in Sec. 560 supra. Holding

this view it becomes unnecessary to discuss other questions raised. It is settled law in this State that when one brings himself within the terms of the Soldiers' and Sailors' Civil Relief Act it should be liberally construed in his favor. Shayne v. Burke, decided October 22, 1946.

The certiorari is granted and the order denying the motion to dismiss is quashed with permission to respondent to amend his bill of complaint.

Thomas, C. J., Chapman, J. and McNeill, Associate Justice concur.

[fol. 74] IN SUPREME COURT OF FLORIDA

[Title omitted]

DIRECTIONS TO CLERK OF SUPREME COURT OF FLORIDA FOR THE PREPARATION OF TRANSCRIPT OF RECORD AND OTHER PAPERS IN THE CASE OF FONTAINE LEMAISTRE, APPELLANT, V. HERMAN LEFFERS, ET ALS., APPELLEES, LATELY PENDING IN THE SUPREME COURT OF THE STATE OF FLORIDA, JUNE TERM, A. D., 1947, APPEALED FROM CIRCUIT COURT FOR LEE COUNTY, FLORIDA, GEORGE W. WHITEHURST, JUDGE

To the Honorable Guyte P. McCord, Clerk of the Supreme Court of Florida:

Kindly forthwith prepare, certify and deliver, on or before the 20th day of September, 1947, to the Honorable Charles Elwood Cropley, Clerk of the Supreme Court of the United States, Supreme Court Building, Washington, D. C., the following papers on file in the office of the Clerk of the Supreme Court of Florida, under the hand and seal of said court, to wit:

1. A full, true and complete transcript of the record on file in said Supreme Court of Florida, as certified by Clerk of Circuit Court for Lee County, Florida.

2. Opinion of the Supreme Court of Florida filed in this cause on the 24th day of June, 1947.

3. Mandate issued on the 11th day of July, 1947, reciting that no petition for rehearing was requested by the appellant within the time required by law.

4. Copy of the opinion above referred to in the case of DeLoach v. Calihan, decided March 21, 1947.

You will also kindly furnish me a certificate of the mailing of said certified papers as above requested.

W. B. Shelby Crichlow, Bradenton, Florida, Attorney for Petitioner, Fontaine LeMaistre being Attorney for Appellant in Court Below.

[fol. 75] STATE OF FLORIDA,
County of Manatee:

Mary Lee Engberg came before me this day and on her oath says that she did on the 12th day of September, 1947, mail a full, true and correct copy of the above and foregoing directions to each of the following two firms of attorneys, respectively:

1. Henderson, Franklin, Starnes and Holt, and J. A. Franklin, Attorneys-at-Law, Comer Building, Fort Myers, Florida, as Attorneys for Real Estate Exchange, Incorporated;

2. Osmond Bie, Box 186, Tallahassee, Florida, as Attorney for Sun Oil Company;

by placing a copy of said notice in each of two envelopes, addressed respectively to the above named attorneys, with full letter postage prepaid, and deposited said envelopes so addressed, stamped, and securely sealed, in the receptacle provided for outgoing mail in the United States Post Office at Bradenton, Florida.

Mary Lee Engberg.

Sworn to and subscribed before me this 12th day of September, 1947. Frances Murphy (Hullinger), Notary Public. My commission expires February 3, 1950. (Notarial Seal.)

[fol. 76] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 77] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 10, 1947

The petition herein for a writ of certiorari to the Supreme Court of the State of Florida is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

SEP 22 1947

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 362

FONTAINE LEMAISTRE,

Petitioner,

vs.

HERMAN LEFFERS, et al.

PETITION FOR WRIT OF CERTIORARI TO THE SURREME COURT OF THE STATE OF FLORIDA

W. B. SHELBY CRICHLOW,
Counsel for petitioner.

DEWEY A. DYE,
ROBERT E. WILLIS,
Of counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 362

FONTAINE LeMAISTRE,

Petitioner,

vs.

HERMAN LEFFERS, et al.

PETITION FOR WRIT OF CERTIORARI

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your Petitioner, Fontaine LeMaistre, respectfully prays this Court for the issuance of a writ of certiorari to the Supreme Court of the State of Florida to review the decision and judgment of said Supreme Court of the State of Florida in the above entitled cause, dated June 24th, 1947, and which became final upon the issuance of the mandate of said court on the 11th day of July, 1947, directed to the Circuit Court of Lee County, Florida, affirming the decision of said lower court.

I

Summary Statement of the Matters Involved

1. This application is based upon proceedings had in the circuit and the supreme courts of the State of Florida, upon motion to dismiss Petitioner's amended bill of complaint, which bill invoked the right of the Petitioner to redeem, under Section 525 of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, Statute of the United States, from tax sale and tax deed, certain real estate belonging to him which was sold for state and county taxes at a time when Petitioner was a lieutenant commander in the naval services of the United States, at which time he had a right of redemption of his land from tax sale.

2. This equity suit (Tr. 1) started March 25, 1946, by Fontaine LeMaistre, hereinafter referred to as Petitioner, against Herman Leffers, Estelle Leffers, W. H. Conrod, Sara Louise Conrod, and the Sun Oil Company, a corporation hereinafter referred to as Respondents, seeking relief under provisions of the Soldiers' and Sailors' Civil Relief Act.

3. In the first paragraph of his bill (Tr. 1), Petitioner alleged that his right to redemption was authorized by Section 525 U. S. C. A., being Section 5 of the 1942 Amendments of Section 205 of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942. This opening paragraph of his bill follows:

> "This action is brought under the provisions of the amendment of October 6, 1942 to Section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940 which provides as follows:
>
> 'The period of military service shall not be included in computing any period now or hereafter to be limited

by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (October 6 1942) be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.' "

4. Amendments to the bill were afterwards filed (Tr. 16, 27-28) to clarify Petitioner's allegations, and to bring in D. T. Farabee, Clerk Circuit Court, Lee County, Florida, and Real Estate Exchange, Incorporated, a Florida corporation, as defendants. These defendants, too, are referred to as Respondents. Only Respondents Sun Oil Company and Real Estate Exchange, Incorporated, contested. Other defendants submitted to decrees pro confesso or disclaimed. Sun Oil Company claims under an oil lease executed by a grantee in the tax deed (Tr. 3) which was issued during Petitioner's service in the Naval Reserve, and Real Estate Exchange, Incorporated, claims title to Petitioner's land by mesne conveyances from grantee in this tax deed (Tr. 16-17).

5. Petitioner, as is alleged in his bill (Tr. 27) was fee simple owner of the land in Lee County, Florida. On August 5, 1940, certificate #40 of that date issued to the purchaser Jennings B. Jones for nonpayment of state and county taxes by the owner. During month of May, 1942, two months before right to apply for tax deed matured in Jones, and while Petitioner had right of redemption from sale of his land for

taxes, he was inducted into the Armed Forces of the United States of America (Tr. 2). He remained in service until December 18, 1945. By his induction he became entitled to benefits of Soldiers' and Sailors' Civil Relief Act and amendments thereto, effective October 6, 1942. He continued entitled to these rights until placed on the inactive list in the Navy of the United States on December 18, 1945 (Tr. 2) and thereafter to the date of the filing of his bill to redeem, no action after his discharge having been taken by the Respondents.

6. Application for the tax deed pursuant to the 1940 tax sale was made by Jones on January 26, 1943 (Tr. 2-3). Tax deed issued to W. H. Conrod March 1, 1943 (Tr. 28).

7. Irrespective of the provisions of Section 525, Supra, *the right of Petitioner to redeem from the tax sale, under Florida Statutes, continued until March 1, 1943, the date on which the tax deed actually issued.* Chapter 17457, Acts of 1935, Laws of Florida, effective as to this certificate which was issued to an individual prior to 1941 provided:

> "Section 1. Tax deeds on real estate sold for non-payment of taxes thereon may be obtained only in the following manner: the holder of any tax certificate may at any time *after two years has elapsed since the issuance of such tax certificate* file such tax certificate with the Clerk of the Circuit Court of the county in which the lands described in such tax certificate are located, notifying the clerk that he desires the lands described therein * * * advertised for sale, etc., etc."

Tax certificate #40 issued August 5, 1940. Application for deed or for sale could not have been made until August 5, 1942. Petitioner entered service in May, 1942, at a time when he had right to redeem from the tax sale evidenced by certificate #40.

Sec. 194.02 Florida Statutes 1941 provides that the owner

> *"may redeem the same at any time after such sale, and before a tax deed is issued therefor."*

A composite condensation of other pertinent Florida Statutes relating to Tax Sales, namely: Sections 193.54; 193.56; 193.58; 193.59, and 193.63 Florida Statutes 1941, demonstrates that these statutes under which Petitioner's land had been sold for taxes, provide:

> "Tax collector shall *sell the lands* and *land shall be struck off* to persons who will *pay the tax* to be reported on a list of *land sold for taxes* and a certificate of *such sale* shall be delivered to the purchaser *and land sold to county for taxes* shall not thereafter be extended."

8. Petitioner's bill of complaint for redemption of his land from the tax sale, was accompanied by payment of funds into the registry of the Court adequate to discharge the taxes. (Tr. 5, 7). His right to relief is a federal right bottomed four square on positive definite terms of Section 525 of Soldiers' and Sailors' Civil Relief Act as amended, because of the issuance of said tax deed March 1, 1943, while he was in the Naval Services of the United States.

9. By identical motions to dismiss Petitioner's bill, (Tr. 31, 33), Respondents Sun Oil Company and Real Estate Exchange, Incorporated, attacked Petitioner's right to relief under the statute of the United States so relied upon by him, viz: Section 525 of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942. The Circuit Court sustained the motions and dismissed the bill of complaint. (Tr. 32, 33). On appeal to Supreme Court of Florida the Supreme Court (highest tribunal of the State) affirmed the Circuit Court, July 11, 1947 (Tr. 42, 43).

10. Motions to dismiss were in part as follows:

> "3. The said bill of complaint, as amended, does not allege that the property described therein was occupied for dwelling, professional, business or agricultural purposes by the plaintiff or his dependents at the commencement of plaintiff's period of military service and that the said real estate is still so occupied."
>
> "4. It is apparent upon the face of the bill of complaint, as amended, that the property involved is wild, unimproved land and not within the purview of Acts of Congress protecting men in the military service."

11. Electing to pursue his remedy by petition for writ of certiorari to the Supreme Court of the United States which has final say in the construction and application of Federal statutes, Petitioner did not file a petition for rehearing in the Supreme Court of Florida. On the 11th day of July, 1947, the Supreme Court of Florida made its judgment final by issuance of its mandate to the Circuit Court of Lee County, Florida, affirming decision of the lower Court. (Tr. 42).

II

Decisions of Supreme Court of Florida

1. Per curiam opinion of the Supreme Court of Florida affirming order of Circuit Court dismissing the Petitioner's bill of complaint, not yet reported, was announced June 24, 1947. Mandate issued July 11, 1947, and is as follows (Tr. 42):

> "The record and the briefs in this cause have been examined and the judgment appealed from is affirmed on authority of DeLoach, et al., *v.* Calihan, decided March 21, 1947. Thomas, C. J., Buford, Adams, and Barnes, J. J., concur."

2. It is observed that there is no discussion of the merits of Petitioner's case, but a dependence solely on the prior

opinion in *DeLoach* v. *Calihan*, (not yet reported in State Reports, 30 So. (2) 910). The DeLoach opinion appears in the transcript. (Tr. 43-44).

3. Right asserted by Petitioner is a Federal right granted to service men by the Civil Relief Act, under Statute of the United States,

> "and the sufficiency of the grounds for denial is for the Supreme Court of the United States to decide."

Angel v. *Bullington*, 1946 Term, in which speaking through Mr. Justice Frankfurter this Court also says:

> "But whether the claims are based on a federal right or are merely of local concern is itself a federal question on which this Court and not Supreme Court of North Carolina, has the last say."

4. In *DeLoach* v. *Calihan* the lower court sustained as adequate bill of complaint of a service man asking relief under circumstances and on grounds as asserted by Petitioner herein, namely: Section 525 of the Soldiers' and Sailors' Civil Relief Act and amendments thereto. On certiorari, Supreme Court of Florida took the view that the service man must by suitable allegation bring his property within terms of Section 560, and show an occupancy and use for business, profession, dwelling, agricultural purposes. Section 525 *supra* does not so require.

5. The Florida court through Mr. Justice Terrell says (Tr. 45):

> "In our view, Section 560, Soldiers' and Sailors' Civil Relief Act defines the standard by which a soldier or sailor may know the class of property on which he is granted indulgence thereunder, and Section 525 puts him on notice of the period of indulgence. As to real estate, the indulgence is limited to that 'owned and occupied for dwelling, professional, business or agricul-

tural purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees are not paid.'"

6. The Supreme Court of Florida, by implication, read into Section 525, *supra*, a clear, plain, unambiguous statute of the United States, something that is not there. It admits of no construction. Its meaning is conclusive and not open to judicial interpretation. *Ebert* v. *Poston* (Mich.) 266 U. S. 548, 69 L. Ed. 425; *U. S.* v. *Hartwell*, 73 U. S. 385, 18 L. Ed. p. 30; *U. S.* v. *Temple*, 105 U. S. 97, 26 L. Ed. 967.

7. The Supreme Court of Florida failed to contrast the separate fields of operation of the two sections, 525, *supra*, and 560, namely:

I. SECTION 525 DEFERS EFFECT OF AN EXISTING SALE FOR TAXES, *i.e., Indulgence is in Redemption.*

Applied to all or any real estate sold for taxes.

II. OTHER, SECTION 560 PREVENTS A SALE FOR TAXES WITHOUT LEAVE OF COURT, *i.e., Indulgence is in Payment When No Sale.*

This section applies exclusively to taxes or assessments falling due prior to or during period of military service for nonpayment of which property has *not* been sold or forfeited."

These matters will be further developed under "REASON AUTHORIZING WRIT," *infra*.

III

Basis of ~~Jurisdiction~~

The jurisdiction of this court is invoked under the provisions of the two following Statutes of the United States:

U.S.C. 1940 ed., Sup. V., Title 50-War, Appendix, Section 525 (As amended October 6, 1942, ch. 581, Sec. 5, 56 Stat. 770) and,

U.S.C., Title 28, Chapter 9, Section 344 (b) (Judicial Code, Section 237), 43 Stat. 937.

Section 344 (b), supra:

"It shall be competent for the Supreme Court by a certiorari to require that there be certified to it for review and determination, with the same power and authority, and with like effect, as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a state in which a decision could be had where is drawn any question * * * where any right, title, privilege, or immunity is specially set up or claimed by either party under * * * any * * * statute of * * * the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as well as where it is denied."

Section 525, supra:

"The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (Oct. 6, 1942) be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment. Oct. 17, 1940, c. 888, Sec. 205, 54 Stat. 1181, as amended Oct. 6, 1942, c. 581, Section 5, 56 Stat. 770.)" (See also Sec. 527 added Oct. 21, 1942, ch. 619, title V, Sec. 507 (b) (2) (B) 56 Stat. 964.)

Wherein a right granted to your petitioner under Section 525, *supra*, to redeem his property from tax sale and tax deed issued thereon March 1, 1943, while he was in Naval services of the United States, has been denied to him by the Supreme Court of the State of Florida—being the judgment of the highest Court of that State. In addition see pertinent Florida statutes heretofore referred to in paragraph 7 of "SUMMARY STATEMENT OF THE MATTERS INVOLVED."

The Florida State Supreme Court has decided a Federal question of substance not heretofore determined by this Court.

IV

Substantial Questions Involved

The Soldiers' and Sailors' Civil Relief Act of 1940 and, particularly the amendments of 1942, were enacted by Congress as a part of the military program for raising an army and navy to carry on the greatest war in which the world has ever been engaged. The enactment of the Soldiers' and Sailors' Civil Relief Act of 1940, and amendments of 1942, was primarily for the purpose of strengthening the armed forces of the United States. The provisions constitute not only a contract or a sacred pledge between the government and every person who was inducted into the military service of the rights, privileges and benefits therein contained, as much as any financial contract which the government established for the purpose of raising money for fighting that war; but this Soldiers' and Sailors' Civil Relief Act was a matter of moral duty owed by the government to its fighting forces, and not a mere matter of indulgence. The protection of the rights of its soldiers who were so inducted should be sacredly upheld and enforced by the courts.

In this opinion by the Supreme Court of Florida, the rights of the person engaged in military service to redeem his property are spoken of as "indulgence."

The substantial property rights of every person who was engaged in the military service of the United States, who owned property in the State of Florida, which was sold for taxes on and after October 6, 1942, the date upon which this section became effective, or thereafter, have been denied, in that such person has been deprived of a definite financial and beneficial right to redeem under Section 525, *supra*, of the statute of the United States by the Supreme Court of the State of Florida.

In this one appeal two cases from the same judicial circuit in a small section of Florida have been so mistreated as a result of the decision of the State Court. There are no doubt a great many other similar instances throughout the State of Florida and elsewhere which may be adversely affected by this opinion of the Supreme Court of Florida.

Moreover, contract liabilities of individuals which have been created through transfers of tax deeds and tax titles of such properties require settlement and adjustment. There are evidently a large number of certain parties involved in this particular litigation, or whose liabilities will grow out of the results of this litigation.

Moreover, titles to real estate throughout the State of Florida where such tax titles have been issued are unsettled, and their value may be rendered uncertain whether such titles are claimed to be owned by soldiers who were in the military service or by individuals or corporations which have invested in such property. The scope of the substantial nature of the questions here involved no doubt affect the contract rights of hundreds, even thousands, of people, both those who were in and those out of the military service of the United States or who made investments in such property and the use and value of such property can only

be held in abeyance and considered of great doubt as to value until this question has been determined and acted upon by the Supreme Court of the United States.

In addition, the Supreme Court of the United States has never passed upon the interpretation of the provisions of 525 and 560 of the Soldiers' and Sailors' Civil Relief Act as amended and for this additional reason this writ should be granted.

Brooklyn Savings Bank v. *O'Neil*, 324 U. S. 697, 89 L. Ed. 1296.

V

Questions

1. Is redemption of land sold for taxes under conditions specified in Section 525 as amended October 6, 1942, subject to the further limitations and conditions set forth in Section 560 of said amended act?

The Supreme Court of Florida says that it is. Petitioner says no such restriction is warranted from the language or context of said section.

2. Are the conditions named in said Section 560 a limitation on the operation of said Section 525, limiting it to the use of property and conditions of occupancy set forth in Section 560, *supra*? The Supreme Court of Florida says Section 525 as amended is so limited. Petitioner contends that Section 525 is not so limited.

3. Was the decision of the Florida State Supreme Court denying petitioner's right to redeem his land from tax sale and tax deed authorized by Section 525 of Soldiers' and Sailors' Civil Relief Act Amendments of 1942? Your petitioner contends that he should have had the right to redeem.

VI

BRIEF

Reasons Authorizing Writ

Justice requires the writ and the litigation is peculiarly within jurisdiction of this Court. The Soldiers' and Sailors' Civil Relief Act is a federal enactment not only for benefit of persons in the armed service but equally as an aid in creating and operating the military forces of the United States; so its meaning and scope is ultimately and finally a question for the Supreme Court of the United States. *Angel* v. *Bullington*, Supreme Court of the United States, 1946 Term. No doubt under this opinion and decisions therein cited, petitioner, having been denied a federal right, has right of appeal, and need not depend upon "grace of certiorari.

Petitioner had a right to redeem his land from tax sale when he entered the service, this under Florida Statute, which right of redemption continued and was in full vitality at time of amendment to the federal act, namely; October 6, 1942, extending period during Petitioner's service. Under the Florida Statute this right of redemption was a right in the owner to "redeem the same at any time after such sale, and before a tax deed is issued therefor," Sec. 194.02, Florida Statutes 1941. Tax deed issued March 1, 1943, after federal amendment and during Petitioner's service.

Section 525 of Relief Act providing that no part of military service shall "be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax or assessment," is self executing and automatically extended time allowed for redemption in all cases coming

within its terms. *Illinois National Bank of Springfield, et al.* v. *Gwinn*, 390 Ill. 345, 61 N. E. 2nd 249 holding also that this provision of the Soldiers' and Sailors' Civil Relief Act must be regarded as written into state statutes of redemption; in effect, amending such statutes by granting additional time for redemption in the specified cases. The amendment excluding any part of a person's period of military service occuring after October 6, 1942, from computation of time for redemption of land sold for taxes is not merely directory or permissive.

It, said the Illinois court, "is imperatively controlling and automatically extends the period of time allowed for redemption in cases coming within the application of its terms. It is evident that the provisions of the Section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940 as amended October 6, 1942, are self-executing and that it was not the intention of Congress to make it discretionary with the court whether under the facts of a particular case an extension of time for redemption should be had."

The intent of Congress to toll the period for redemption from tax sales is clear from the language of Section 525,—the Section says so in direct, positive words.

This intent is expressed as a purpose in Report number 2198 of the Committee on Military Affairs of the House of Representatives to accompany H. R. 7164 (the amendment of October 1942) in which report, explaining this amendment to the House of Representatives, it is said:

> "This section amends Section 205 of the act to toll for the period of military service of the person concerned the running of any period limited by law, regulation, or order for the bringing of any proceeding in any board, bureau, commission, department, or other agency of Government. The running of the statutory period during which real property may be redeemed after sale to enforce any obligation, tax or assessment

> is likewise tolled during the part of such period which occurs after the enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942. Although the tolling of such periods is now within the spirit of the law, it has not been held to be within the letter thereof (J. R. 1269 C. B., June 1922, p. 311; *Ebert* v. *Poston*, 45 S. Ct. 188, 266 U. S. 548, 69 L. ed. 435)."

The general all inclusive language of this Section 525 is apparent when Congress realized that it included the internal revenue laws. So within about two weeks after its enactment, to-wit: October 21, 1942; it was amended by Section 527, which excluded the internal revenue laws from the effect of this section.

Power of Congress to extend the period of redemption cannot be questioned. An interesting and vital review of this and related propositions is found in *U. S.* v. *Alberts, et al*, 59 Fed. Suppl. 298. The warpower is invoked. Contracts are not impaired nor is Congress so limited. Final conclusion of the Alberts opinion is,

> "effect of this act was to extend period of redemption provided by the state law * * * to a period extending to at least six months after military service of the individual involved shall have been terminated."

The extension as to taxes and assessments is designated as "unqualified."

A proper construction of the two sections, namely, 525 and 560, is necessary as a matter of judicial duty by this Court in declaring federal rights or rights under federal statute and will inevitably be different from that of the Supreme Court of Florida. The two sections operate in distinct spheres, one extending the period of redemption for property already sold for taxes, and the other section preventing a sale or proceeding or action, for the purpose of enforcing collection of unpaid taxes or assessments with-

out leave of court first had and obtained by the officer seeking to enforce such collection.

Section 525 applies exclusively to and directly upon PERIOD ALLOWED FOR REDEMPTION of any real property which had been sold or forfeited to enforce any obligation, tax or assessment, which period had not expired when the act was amended or which period might be thereafter provided. By this section in computing the "period allowed for redemption" of ANY REAL PROPERTY ALREADY SOLD TO ENFORCE A TAX LEVY, any time spent by owner in military service shall be excluded. This section operated to extend an unexpired period of redemption existing at time of amendment by the time spent in military service. It applies in a more mature or advanced situation and has a field of operation quite separate and distinct from Section 560.

Section 525 applies to ALL or ANY real estate sold for taxes.

Section 560 applies exclusively to TAXES OR ASSESSMENTS falling due prior to or during period of military service, for nonpayment of which property HAS NOT BEEN SOLD OR FORFEITED.

That is, Section 560 operates directly upon the tax providing that no sale to enforce such tax, or any proceedings or action for such purpose shall be commenced except by leave of court. This section in protecting real estate not sold for taxes is limited to that owned and occupied for dwelling, professional, business or agricultural purposes by the veteran, his dependents, or employees.

In view of opinion of Supreme Court of Florida improperly confining remedy of this veteran to relief under Section 560, it becomes necessary for this Court to also consider features of Section 560 of the Relief Act overlooked by the Florida court in reaching its strange decision, not previously referred to, because not material prior to the decision. Subsection (1) (the section is captioned "Further Relief")

grants right, during or within six months after military service "in respect of ANY tax or assessment—falling due prior to or during period of military service," for veteran to apply to court, and unless court is of opinion ability of applicant to pay has not been materially affected by reason of his military service," court may grant as relief:

> "In case of any other obligation, liability, tax or assessment, a stay of the enforcement during military service, and from date of termination of such period of military service or from date of application, if made after such service, for a period of time equal to the period of military service * * * etc., as to the terms of payment," etc.

The Florida court failed to consider the broad purpose and program of the Soldiers' and Sailors' Civil Relief Act. As a matter of public policy and necessity this Court should review the whole field.

Certainly what a court could not do, *i.e.*, foreclose a tax and forfeit land for taxes because prohibited by the Relief Act, the clerk should not be permitted to do by ministerial act, in face of Sec. 525 preserving right of redemption in soldier.

VII

Prayer for Writ

WHEREFORE your Petitioner prays that a writ of certiorari issue under the Seal of this Court directed to the Supreme Court of the State of Florida commanding said court to certify and send to this court a full and complete transcript of the record and of the proceedings of said court had in the said case of:

Fontaine LeMaistre versus Herman Leffers, et al., so styled upon its docket, to the end that this cause may be

reviewed and determined by this Court as provided by the Statutes of the United States, and that the judgment herein of the said Supreme Court of the State of Florida be reversed by this Court, and for such further relief as to this Court may seem proper.

This 22nd day of September, A. D. 1947.

Respectfully submitted,

W. B. Shelby Crichlow,
Counsel for Petitioner.
Dewey A. Dye,
Of Counsel for Petitioner.
Robert E. Willis,
Of Counsel for Petitioner.
Bradenton, Florida.

APPENDIX

Parts of Sections 194.01 and 194.02, Florida Statutes 1941 Relating to Tax Sale Certificates and Tax Deeds

194.01 • • • "all redemptions of lands hereafter certified or sold to the county or sold to individuals, shall be made through the clerk of the circuit court of the respective counties wherein such lands are situated."

194.02. *"Lands sold to Purchaser other than the County may be Redeemed.*

Any person or agent of any person owning or claiming such lands sold for taxes or any part or parcel thereof or any interest therein or the creditor of any such owner, or claimant, may redeem the same at any time after such sale, and before a tax deed is issued therefor, by paying to the clerk of the circuit court of county wherein such land is situated, the face of the certificate of sale or such portion thereof as the part or interest redeemed, shall bear to the whole, and interest thereon from April 1st of the year in which the taxes became delinquent, together with the fee of 50c for the clerk for each certificate or part of certificate so redeemed. Such interest on lands hereafter sold shall be at the rate per annum bid by the purchaser for the first year, not in excess of 18% per annum and 8% per annum for the time after the first year, but not less than 5% of the face of the certificate." • • •

FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 362

FONTAINE LE MAISTRE,

Petitioner,

vs.

HERMAN LEFFERS, ET AL.,

Respondents

BRIEF OF RESPONDENT REAL ESTATE EXCHANGE, INC. ON PETITION FOR WRIT OF CERTIORARI

R. A. HENDERSON, JR.,
J. A. FRANKLIN,
Attorneys for Real Estate Exchange, Inc.,
One of the Respondents.

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No. 362

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vs.

HERMAN LEFFERS, ET AL.,

Respondents

BRIEF OF RESPONDENT REAL ESTATE EXCHANGE, INC. ON PETITION FOR WRIT OF CERTIORARI

Petitioner has filed Petition for issuance of Writ of Certiorari to the Supreme Court of the State of Florida to review the decision and judgment of said Court in this cause. This Brief on behalf of Real Estate Exchange, Inc., a corporation, one of the Respondents, is filed in opposition to the said Petition.

Statement of Case

Petitioner owned certain wild, unoccupied and unimproved lands in Lee County, Florida (Tr. 2-5). He did not pay taxes levied by the State of Florida and County of Lee for 1939. These taxes became delinquent on April 1st of the following year. The procedure in Florida for

enforced collection of taxes is prescribed by Sections 193 and 194, Florida Statutes, 1941, and condensed, is as follows:

Sec. 193.51. On or before June 1st of each year the County Tax Collector publishes notice of lands on which taxes are unpaid, giving amount due and fixing time for public sale.

Sec. 193.54. On the day designated the Collector strikes off the land to any bidder who offers "to pay the taxes, interest, costs, and charges thereon." If there are no bidders "each parcel shall be bid off by the tax collector for the County."

Sec. 193.59. The Tax Collector gives to the purchaser a certificate evidencing the payment, which certificate constitutes a lien on the land.

Sec. 194.02. The owner of the lands may redeem the same at any time after issuance of the certificate and before a tax deed is issued.

Sec. 194.15: After the lapse of two years from date of the certificate the holder of the certificate may apply for a tax deed. Due notice is given (194.16); the lands are sold at public auction to the highest bidder (194.21) and upon sale a statutory form of tax deed is issued.

Sec. 194.53, Upon issuance of a tax deed all right, title, interest in or liens upon the property, except liens for general taxes, of equal dignity with county taxes, are cut off and forever declared null and void.

In accordance with the foregoing provisions, on August 5, 1940, the Tax Collector of Lee County, Florida, issued Tax Certificate No. 40 describing Petitioner's lands (Tr. 2). The lands were not redeemed by payment of the amounts due, and on January 20, 1943, Application was made for issuance of tax deed and such deed was issued on March 1, 1943 (Tr. 3).

On August 18, 1942, Petitioner was inducted into the military service (Tr. 2). He was discharged December

18, 1945, and thereafter on March 25, 1946, filed suit in equity in the Circuit Court for Lee County, Florida, seeking to set aside the tax deed, claiming relief under the provisions of Section 205, Soldiers' and Sailors' Civil Relief Act, as amended October 6, 1942, as appears from the third paragraph of Petitioner's Bill of Complaint, to-wit (Tr. 2):

> "3. That by reason of the existence of said military service of the said plaintiff, as aforesaid, the provisions of the amendment of the preceding act applied to him from the date when the same became effective, to wit: the 6th day of October, 1942, and *were self-executing and gave an automatic extension* of time for the redemption of any taxes or tax certificates which were then outstanding or delinquent under the laws of the State of Florida against lands of this plaintiff."

Section 205 is as follows (Sec. 525, Title 50, U. S. C. A.):

> "The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs, after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (October 6, 1942) be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax or assessment."

Motion was filed by Respondent to Dismiss the Bill of Complaint (Tr. 31), the Motion being grounded on the proposition that Section 205 afforded no relief under the

allegations of the Bill. Upon argument of the Motion, the lower court was of the opinion that the Bill of Complaint did not state a case for relief and entered Order dismissing the Bill (Tr. 32). Petitioner took appeal to the Supreme Court of Florida and that Court upheld the lower court on the theory that the allegations of the Bill of Complaint failed to bring Petitioner within the terms of the Soldiers' and Sailors' Civil Relief Act (Tr. 45).

History of Section 205

This Section first appeared as Section 205 of the Soldiers' and Sailors' Civil Relief Act of 1918, and read as follows:

> "The period of military service shall not be included in computing any period now or hereafter to be limited by any law for the bringing of any action by or against any person in military service or by or against his heirs, executors, administrators or assigns, whether such cause of action shall have accrued prior to or during the period of such service (Mar. 8, 1918, c. 20, #205, 40 Stat.)"

Several cases appear in the reports involving this Section. Under the laws of many States mortgages may be foreclosed without judicial proceedings, and after foreclosure a deed is issued, and the owner is given a specified time to come in and redeem. Persons who had been in the military service during the first war filed suit claiming that Section 205 tolled the running of the period of redemption and that they had the right to redeem, notwithstanding the statutory period had elapsed. Such contention reached this Court in the case of *Ebert* v. *Poston* (Mich.), 266 U. S. 548, 69 L. Ed. 435, and with reference thereto this Court held:

> "The statutory right to redeem from a sale by advertisement for foreclosure of a mortgage is not a right of action within the operation of Section 205 of the Soldiers' and Sailors' Civil Relief Act to the effect

that the period of military service shall not be included in computing any period now or hereafter to be limited by any law for the bringing of an action by or against any person in military service."

Other cases involving this Section are as follows:

Wood v. *Vogel* (Ala.), 204 Ala. 692, 87 Sou. 174;
Bell v. *Buffington* (Mass.), 244 Mass. 294, 137 N. E. 287;
Taylor v. *McGregor State Bank* (Minn.), 144 Minn. 249, 174 N. W. 893.

The Soldiers' and Sailors' Civil Relief Act of 1940 re-enacted Section 205 without changes. Thereafter in 1942 Congress took cognizance of the litigation involving this Section and the Act was amended on October 6, 1942, by adding the last clause thereof, reading as follows:

"Nor shall any part of such period which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (October 6, 1942) be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax or assessment."

The amendments were prepared by the House Committee on Military Affairs which made a report explaining the reasons for proposing the changes. With reference to Section 205 this report shows (Title 50, U. S. C. A. Soldiers' and Sailors' Civil Relief Act, Historical Data, page 108), as follows:

"The running of the statutory period during which real property may be redeemed after sale to enforce any obligation, tax or assessment is likewise tolled during the part of such period which occurs after the enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942. Although the tolling of such periods is now within the spirit of the law, it has not

been held to be within the letter thereof. I. R. 1269, C. B. June, 1922, P. 311; Ebert *v.* Poston, 45 Sup. Ct. 188, 266 U. S. 548, 69 L. Ed. 435."

In many of the States the procedure for sale of land for non-payment of taxes is similar to the foreclosure of a mortgage without judicial procedure. In those States having such procedure (and Florida does not have this method), lands are sold for non-payment of taxes and a deed is issued to the purchaser, but there is a right on the part of the land owner to redeem within a specific statutory period, usually one or two years. For statement of the methods of procedure in general use throughout the country, see 51 American Jurisprudence, 954.

Taking notice of the similarity in procedure in sale of lands for non-payment of taxes and in foreclosure of mortgages without judicial procedure, when amendments were prepared to Section 205 so as to extend the period of redemption so as to apply to mortgages, Congress likewise included "taxes or assessments." So far as we can find no case has arisen involving the foreclosure of taxes or assessments under this amendment.

This history of the amendment to Section 205 is given as it shows the intent of Congress in adopting the amendments.

Propositions Argued

1. Section 205 of Soldiers' and Sailors' Civil Relief Act is not applicable under the Florida procedure for forced collection of taxes on real estate, and said Section affords no relief to petitioner.

2. The Soldiers' and Sailors' Civil Relief Act does not unconditionally and automatically protect wild, unimproved lands owned by a person in military service from sale for non-payment of taxes.

3. The sale of petitioner's land was made on August 5, 1940, twenty-six months before enactment of the amendment of October 6, 1942, and the amendment should not be given retroactive effect so as to afford relief to petitioner.

ARGUMENT

First Proposition

Section 205 of Soldiers' and Sailors' Civil Relief Act Is Not Applicable under the Florida Procedure for Forced Collection of Taxes on Real Estate and Said Section Affords No Relief to the Petitioner.

As stated in 51 American Jurisprudence, page 954, the methods of forcing collection of taxes on real estate vary in the different States, but fall into two general classes as follows:

> First. "By one method, which prevails in many of the states, a deed is delivered to the purchaser within a few days after the sale and the title passes to him subject to defeasance by redemption during the statutory period; during that period the purchaser remains passive, and if the owner fails to exercise his right of redemption within the specified time, the title becomes absolute by force of the statute, without any further proceedings in Court or elsewhere to establish it."
>
> Second. "By the second method, which is now in force in many states, the purchaser's title is inchoate and he receives no deed until the period of redemption has expired, and before the expiration of the period he must give notice to the owner of the time when the right of redemption will expire and the amount which he must pay in order to redeem the property, and no deed is issued to the property and no title passes to him until this notice has been sent."

From the history of Section 205 which we have set out, *supra*, there can be no question but that the 1942 Amend-

ment was brought into existence to toll the time for redemption in those States having procedure whereby lands are sold and a deed is delivered to the purchaser and title vested in him, subject only to defeasance by redemption during a fixed period of one or two years.

The procedure in Florida is set out, *supra,* and is in line with the second method referred to in American Jurisprudence. Very clearly the Amendment was not designed to apply to procedure of this type and cannot be extended to cover petitioner's case.

In the case of *State ex. rel Seville Holding Co.* v. *Draughon, et al.,* 127 Fla. 528, 173 Sou. 353, 111 A. L. R. 234, the Supreme Court of Florida clearly states the effect of the issuance of a tax certificate in Florida:

> "A tax certificate is a contract between the state and the purchaser thereof who is granted by such certificate the benefit of the laws of the state in force at the time securing and defining his rights under it. At the time the particular tax certificate involved in this case was issued, such certificate consfituted an enforceable statutory lien upon the delinquent tax payer's property capable of being redeemed by him, upon certain specified conditions, and only on such specified conditions, as were at the time of the issuance of such tax certificate prescribed by the statutes, including section 1002, C. G. L., which governs application for redemption postponed until after advertisement for tax deed is begun. See Starks *v.* Sawyer, 56 Fla. 596, 47 So. 513 (3rd syllabus); Clark-Ray-Johnson Co. *v.* Williford, 62 Fla. 453, 56 So. 938 (5th syllabus).

Florida statutes use the word "sale" in connection with proceedings for the issuance of a certificate, but clearly there is no "sale" within the accepted meaning of that word. Lands can only be struck off for the amount of taxes, interest, penalty and costs. There is no public auction

with everyone bidding and the certificates being sold to the highest bidder, but (Sec. 193.56, Fla. St. 1941):

> "193.56—To whom land struck off: The land shall be struck off to the person who will pay the tax, interest, costs and charges and will demand the lowest rate of interest for the first year, not in excess of the maximum rate allowed by law."

The only effect of the "sale" is to transfer the lien of the State and County to the individual who purchases the certificate, thus enabling the State and County to raise tax money for maintenance of public functions. This lien continues as a prior claim against the land until redeemed by the owner, or until the holder of the certificate files the certificate with the Clerk of the Circuit Court and applies for a tax deed, whereupon notice is given to the owner and the opportunity to redeem is allowed until there is a sale of the land. When sale is made, it is at public auction, to the highest and best bidder, with everyone having the right to bid. When deed is issued, there is no period of redemption. If the land brings more than the amount due for taxes, as is quite often the situation, the surplus is paid to the owner as provided by Sec. 194.22, Fla. Sts. 1941:

> "After all liens for general taxes and special assessments of the municipality and other taxing districts upon said property are paid in full, the balance of the purchase price shall be retained by the clerk and notice mailed to the owner of such lands * * * that this sum will be paid to him upon demand."

Under the Florida procedure there is no "sale or forfeiture" within the contemplation of Section 205, until the public sale pursuant to application for tax deed. When such sale is made and tax deed is issued, there is no period

of redemption, as Section 194.53, Fla. St. 1941, expressly provides:

> "194.53—All rights terminated upon issuance of tax deed. Upon issuance of a tax deed to any property under the provisions of this chapter, all right, title, interest in or liens upon said property, except liens for general taxes of equal dignity, with county taxes, shall be cut off and forever declared null and void."

We think our discussion of the Florida procedure demonstrates that the 1942 Amendment of Section 205 cannot be effective in Florida. However, if a mere reading of the statutes is not conclusive on this point, an examination of the facts shown by the pleadings in this case will certainly remove any doubt of the applicability of the amendment in Florida.

The certificate involved in this case was issued August 5, 1940. On August 5, 1942, the holder of the certificate could have applied for tax deed. This was prior to Petitioner being inducted into the military service. The Amendment to Section 205 was enacted October 6, 1942, twenty-six months after issuance of the certificate, and two months after the lapse of time within which tax deed could have been applied for. So it is, the statutory period had elapsed and the rights of the holder of the certificate had fully matured before entry of the Petitioner into the military service, and before enactment of the Amendment under which he claims relief.

It is true that Petitioner under the Florida law had the right to redeem his land any time before the actual issuance of the tax deed. But, this fact does not help Petitioner. The provision of Section 205 is that the period of military service will not be included in

> "computing any period now or hereafter provided by law for the redemption of real property sold or forfeited to enforce any obligation, tax or assessment."

The tax certificate holder had a statutory right on August 5, 1942 to apply for tax deed. So far as he was concerned the necessary time had elapsed, and his rights had fully matured. When the holder of the tax certificate made application for tax deed on January 20, 1943, even if the period of military service of Petitioner should not be included in computing the period within which the holder of the tax certificate was entitled to apply for a deed, two full years having elapsed since issuance of the certificate, the holder was entitled to apply and receive tax deed.

To conclusively show that the Section has no application to the Florida procedure, we need only *point out that Section 205 nowhere prohibits the issuance of a tax deed because the owner of the land is in the military service. The only prohibition is against including the period of military service in computing the period of redemption.* As above stated, under the facts here, without including the period of military service of Petitioner, the holder of the tax certificate on Petitioner's land was still under the Florida law entitled to apply for and to receive a tax deed.

We recognize that an act of this character must be liberally construed by the Court in order to effectuate the purpose of Congress. Bearing this in mind, with the available history of this Section and the evident intent of Congress in enacting the amendments of 1942, it would do violence to the amendment to extend it to cover the situation presented in this case.

The language of this Court in *Ebert* v. *Poston, supra,* dealing with construction of Section 205 in its original form, is most appropriate:

> "There is a further contention that the broad purpose of the act declared in Section 100 demands that it be liberally construed to include the situation presented in this case. Persuasive legislative reasons for distinguishing between the cases explicitly cared for by

> Sections 302, 205, and the present case, suggest themselves. We have no occasion to state them. The judicial function to be exercised in construing a statute is limited to ascertaining the intention of the legislature therein expressed. A casus omissus does not justify judicial legislation. Compare United States *v.* Weitzel, 246 U. S. 533, 543, 62 L. Ed. 872, 874, 38 Sup. Ct. Rep. 381."

In the case of *Oliver* v. *Oliver*, 244 Ala. 234, 12 So. 2d. 853, the Supreme Court of Alabama had before it the construction of Section 200 of the Soldiers' and Sailors' Civil Relief Act of 1940, and makes the following statement:

> "This statute was intended solely for the benefit of those in the armed services of the United States and is to be liberally construed to effectuate its purpose. Royster *v.* Lederle, 6 Cir. 128 F. 2d. 197. But this does not mean that the courts are to enter into the field of speculation and go beyond the plain import of the language of the statute. Bolz Cooperage Corp. *v.* Beardslee, 211 Mo. App. 109, 245 S. W. 611; Note, 130 A. L. R. 776."

In view of the facts in this case, whether Section 205 is strictly or liberally construed, we submit it cannot be extended to afford relief to Petitioner in this case where:

1. The relief intended by Congress under Section 205 is not applicable to the Florida procedure for forcing collection of unpaid taxes on real property;

2. Even if the amendment should be held applicable in Florida, and the period of military service of Petitioner be not included in computing the period within which the holder of the tax certificate is authorized to apply for a tax deed, under the facts in this case the holder of the certificate had a legal right to apply for and receive tax deed.

For the reasons set out, the decisions of the Circuit Court for Lee County, Florida, and the Supreme Court of the

State of Florida are correct and certiorari should not be granted in this case.

Second Proposition

The Soldiers' and Sailors' Civil Relief Act Does Not Unconditionally Protect Wild, Unimproved Lands Owned by a Person in the Military Service From Sale for Non-payment of Taxes.

The Circuit Court for Lee County, Florida, in sustaining Motion to Dismiss the suit filed by Petitioner, (Tr. 33), considered all the provisions of the Soldiers' and Sailors' Civil Relief Act and reached the conclusion that there was no intention on the part of Congress unconditionally to protect wild, unimproved lands owned by a person in military service from sale for non-payment of taxes. Upon appeal to the Supreme Court of the State of Florida, the Supreme Court upheld the lower Court on authority of *DeLoach* v. *Calihan*, decided March 21, 1947, by the Supreme Court of Florida, (Tr. 42). The Supreme Court of Florida in the latter case said:

> "In our view, Section 560, Soldiers' and Sailors' Civil Relief Act defines the standard by which a soldier or sailor may know the class of property on which he is granted indulgence thereunder, and Section 525 puts him on notice of the period of indulgence. As to real estate, the indulgence is limited to that 'owned and occupied for dwelling, professional, business or agricultural purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees are not paid.' "

The Soldiers' and Sailors' Civil Relief Act (Act October 17, 1940, C. 888, 54 Stat. 1178, 50 U. S. C. A. App. 113) now contains seven Articles, headed:

Article I. General Provisions
Article II. General Relief
Article III. Rent, Installment, Contracts, Mortgages
Article IV. Insurance
Article V. Taxes and Public Lands
Article VI. Administrative Remedies
Article VII. Further Relief

Section 203 appears under Article II "General Relief." As originally written, its sole purpose was to toll the running of the statute of limitations. The 1942 Amendment added the clause extending it to provide that the period of military service would not be included in computing the period of redemption of real property sold or forfeited to enforce taxes. The 1942 Amendments likewise added Article VII with the provisions contained therein providing additional relief to persons in the military service.

The question of taxes is dealt with exhaustively and carefully in Article V (50 U. S. C. A., App. Sec. 560). The types of property protected and the machinery used to effect such protection are contained therein.

Protection is given:

> "In respect to personal property, money or credits, or real property owned and occupied for dwelling, professional, business or agricultural purposes by a person in military service or his dependents at the commencement of his period of military service, and still so occupied by his dependents or employees."

The sale of property so protected is prohibited except upon leave of Court granted upon application by the person whose duty it is to enforce collection of the tax. The Court to which application is made is authorized to stay proceedings for a period extending not more than six months after termination of military service. If the property is sold or forfeited to enforce collection of taxes or assessments, the

right to redeem or commence an action to redeem such property is given for the period of six months after termination of military service.

Should a person in the military service own property not of the type covered by Article V he is fully protected by Article VII giving "Further Relief." Under this Article (Section 590, Title 50 U. S. C. A.) a person may:

a. During the period of military service or six months thereafter,

b. Apply to Court for relief in respect of *any taxes or assessments* falling due prior to or during his period of military service; and

c. If the Court finds the ability of the applicant to pay his taxes has been materially affected by reason of military service, it may stay the enforcement during the period of time equal to the period of military service and provide for payments in installments.

The provisions of Article V and Article VII give full, adequate and complete protection to persons in the military service against loss of property for non-payment of taxes or assessments on any class of real property whether such taxes accrued prior to or during period of military service.

By the same token, under these sections, a person in the military service owning valuable rental property or large tracts of unoccupied lands used for grazing purposes, out of which rental property or grazing lands the person in the military service is receiving a large income, and is amply able to pay taxes and assessments, is not able merely by reason of being in the military service to avoid his just contributions to the maintenance of government.

This Court will take cognizance of the fact that thousands of young men and women entered the military service from every section of the country. A general right for an in-

definite period to redeem any and all lands sold for non-payment of taxes would make it impossible for the States, Counties, Municipalities and other taxing districts to find purchasers at tax sales and would effectively prohibit the collection of taxes on lands owned by persons in the military service or who might be subjected to such service. During the period from 1941 to the present time if the taxing districts of Florida had not been able to collect taxes or to sell for non-payment of taxes any and all lands or property owned by persons in the military service, there would have been a serious impairment of the financial structure of local government throughout the country. Certainly Congress had no such intention in mind in the passage of the Soldiers' and Sailors' Civil Relief Act.

Under Section 500 of the Act (Sec. 560, Title 50 U. S. C. A. App.) the Collector of Taxes makes application to sell property of the type covered by Section 500, if, in the opinion of the Court, the ability to pay of the person in military service is not materially affected by reason of such service, the Court is not authorized to stay proceedings. If the property is sold, the person in the military service must come in not later than six months after termination of service and apply for relief.

On the other hand, if the argument of Petitioner is sound and a person in the military service is unconditionally protected under Section 205 of the Act (Sec. 525, 50 U. S. C. A. App.) against the sale of ANY land for non-payment of taxes, his ability to pay is not taken into consideration, and he has an indefinite period, as long as two years in some states, after his discharge from the military service, within which to bring proceedings to set aside the sale.

In Section 500 of the Act Congress shows an intent to give absolute protection to a person in the military service against loss for non-payment of taxes of his home or business. By Section 700 of the Act (Sec. 590, Title 50 U. S.

C. A. App.) the person in the military service may apply for relief in respect to "any taxes or assessments" on property of any description, and if the situation warrants, the Court to whom application is made may stay enforcement of the tax. This gives the person in the military service all reasonable protection.

After very carefully working out Sections 500 and 700, certainly there was no intent on the part of Congress that Section 205, appearing earlier in the Act, would entirely abrogate Sections 500 and 700, and that under Section 205 a person in the military service owning the Willard Hotel, or other more valuable income producing real estate, could sit back, enjoy a large income, pay no taxes and be unconditionally protected.

Petitioner, with reference to Sections 205 and 500 says (Petition 16):

> "The two sections operate in distinct spheres, one extending the period of redemption for property already sold for taxes, and the other section preventing collection of unpaid taxes or assessments without leave of court first had and obtained by the officer seeking to enforce such collection."

This contention is not sound. A reading of the two sections plainly shows that Section 500 (3) covers the same ground as Section 205. This Section provides:

> "When by law such property may be sold or forfeited to enforce the collection of such tax or assessment, such person in military service shall have the right to redeem or commence an action to redeem such property at any time not later than six months after the termination of such service, but in no case later than six months after the date when this Act ceases to be in force."

Thus in Section 205, wholly an act of limitation, Petitioner contends Congress made provision for extending the period

allowed for redemption of *any and all* real property. Yet in Article V, headed "Taxes and Public Lands," where Congress carefully covered the subject of taxes, the same subject of redemption of land sold for non-payment of taxes is provided for, but limits the right of redemption to property occupied for "dwelling, professional, business, or agricultural purposes," and the owner is only allowed six months after termination of service to redeem, as against an indefinite period, possibly as long as two years after termination of service, under Section 205.

It is our view that Section 500 deals with taxes and shows the intent of Congress as to protection to be given to persons in military service, and under well recognized rules of construction, Congress must be presumed to have expressed its intention in Section 500, rather than in Section 205, where its attention was turned to other considerations.

For supporting authorities, see:

U. S. v. *Jackson*, C. C. A. 143 Fed. 783; 75 C. C. A. 41;
D. Ginsberg & Sons, Inc. v. *Popkin*, 285 U. S. 204; 52 S. Ct. 322; 76 L. Ed. 705.

In the *Jackson* case, the Circuit Court of Appeals for the Ninth Circuit, quoting from *Long* v. *Culp*, 14 Kan. 412, says:

> "It is also a rule of construction that, when one section of a statute treats specially and solely of a matter, that section prevails in reference to that matter over other sections in which only incidental reference is made thereto. Not because one section has more force as a legislative enactment than another, but because the legislative mind having been, in the one section, directed to this matter, must be presumed to have there expressed its intention thereon rather than in other sections where its attention was turned to other things." *Wellsburg* v. *Panhandle T. Co.* (W. Va.) 48 S. E. 746, 751.

In the *Ginsberg* case, this Court announces a like rule of construction, saying:

> "General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment. United States *v.* Chase, 135 U. S. 255, 260; 34 L. Ed. 117, 119, 10 S. Ct. 756; 8 Am. Crim. Rep. 649. Specific terms prevail over the general in the same or another statute which otherwise might be controlling."

A further rule of construction is applicable in this case. Section 500 appears later in the Relief Act than Section 205. If there is a conflict between the two Sections, then Section 500 is controlling. See the seventh headnote in the case of *Great Northern Ry. Co.* v. *U. S.*, C. C. A. 8th Circuit, 155 Fed. 945; 84 C. C. A. 93 affirmed 28 S. Ct. 313; 208 U. S. 452; 52 L. Ed. 567, as follows:

> "The intention of the legislature constitutes the law, and may be as effectually manifested by what is necessarily implied as by what is expressed, and where there are conflicting manifestations of the legislative rule, the last is controlling even though it rests in necessary implication."

When the whole Relief Act is examined it is certain:

1. That the amendment to Section 205 was added to extend the period of redemption in those States where a definite time is allowed after "sale or forfeiture" of real property within which to redeem;

2. That the amendment does not have a field of operation under the procedure in Florida.

3. That Congress attempted by Articles V and VII to provide complete protection to persons in military service against loss of their property for non-payment of taxes;

4. That the amendment to Section 205 must be so construed as to harmonize with provisions of Section 500 (3), and when so construed, there is no error in the decision of the Supreme Court of Florida denying relief to petitioner.

THIRD PROPOSITION

The Sale of Petitioner's Land Was Made on August 5, 1940, Twenty-six Months Before Enactment of the Amendment of October 6, 1942, and the Amendment Should Not Be Given Retroactive Effect so as to Afford Relief to Petitioner.

If there was a sale or forfeiture of Petitioner's land within the purview of Section 205, this occurred on August 5, 1940, when the certificate was issued. After the tax deed was issued on March 1, 1943, there was no period of redemption. The sale or forfeiture, therefore, occurred twenty-six months before the enactment of the Amendment of October 6, 1942.

The amendment is as follows:

> "nor shall any part of such period which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942 (October 6, 1942) be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax or assessment."

Clearly any portion of military service arising prior to October 6, 1942, is excluded from any consideration.

"Any period now or hereafter provided by any law" can only refer to the statutory periods provided by existing or future laws of the several States permitting redemption of property.

In using the language "sold or forfeited" the amendment does not provide "now or hereafter sold or forfeited." It was very carefully drawn and unquestionably expressed the intent of Congress. No intent being shown that the amendment should apply to sales made long before the enactment, it cannot be given retroactive effect.

Ebert v. *Poston, supra*, involved a mortgage foreclosure in Michigan. The sale was made on February 5, 1918. The land owner had one year within which to redeem. Section 205 in its original form was passed March 8, 1918, Poston, who owned the land, enlisted in the army on September 29, 1918, and after his discharge filed suit, claiming the benefit of Section 205. This Court held:

> "Without resort to the common rule that statutes are ordinarily to be construed as prospective in operation (Shwab *v.* Doyle, 258 U. S. 529, 534, 66 L. Ed. 747, 752, 26 A. L. R. 1454, 42 Sup. Ct. Rep. 391) it is clear that Congress did not intend to deal with sales on foreclosure, made before the passage of the Act."

In the *Shwab* case (*Shwab* v. *Doyle*, 258 U. S. 529, 66 L. Ed. 747), cited in *Ebert* v. *Poston*, this Court had before it the construction of Estate Tax Act of 1916. Mrs. Dickel by deed dated April 21, 1915, assigned certain securities for benefit of Victor E. Shwab. Mrs. Dickel died September 16, 1916. Seven days before her death the Estate Tax Act of September 8, 1916, was passed, providing for taxes to be imposed upon the transfer of the net estate of every decedent dying after the passage of the act "to the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has created a trust, in contemplation of or intended to take effect" after his death, and any transfer of a material part of his property made within two years prior to death, without consideration shall, unless shown to the contrary, be deemed

to have been made in contemplation of death. The taxing authorities assumed that the act was applicable to the deed made by Mrs. Dickel and imposed taxes against the property. In construing the Act, this Court says:

> "The initial admonition is that laws are not to be considered as applying to cases which arose before their passage unless that intention be clearly declared. 1 Kent. Com. 455; Eidman *v.* Martinez, 184 U. S. 578, 46 L. Ed. 697, 22 Sup. Ct. Rep. 515; White *v.* United States, 191 U. S. 545, 48 L. Ed. 295, 24 Sup. Ct. Rep. 171; Gould *v.* Gould, 245 U. S. 151, 62 L. Ed. 211, 38 Sup. Ct. Rep. 53; Story, Const. Sec. 1398. The comment of Story is: 'Retrospective laws are, indeed, generally unjust; and, as has been forcibly said, neither accord with sound legislation nor with the fundamental principles of the social compact.'
>
> There is absolute prohibition against them when their purpose is punitive; they then being denominated ex post facto laws. It is the sense of the situation that that which impels prohibition in such case exacts clearness of declaration when burdens are imposed upon completed and remote transactions, or consequences given to them of which there could have been no foresight or contemplation when they were designed and consummated."

In the light of these clear expressions of this Court, we submit that the amendment to Section 205 should not be given retroactive effect and apply to:

1. A sale made twenty-six months before enactment of the amendment;

2. A sale made before Petitioner entered the military service;

3. Situation where holder of the tax certified was entitled to apply for and receive a tax deed before amendment was enacted.

Conclusion

For the several reasons herein set out, we see no error in the decision of the Supreme Court of Florida and urge that Petitioner's application for Certiorari be denied.

Respectfully submitted,

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Attorneys for Real Estate Exchange, Inc.,
One of the Respondents.

SUPREME COURT OF THE UNITED STATES

No. 362.—October Term, 1947.

Fontaine Le Maistre, Petitioner, v. Herman Leffers et al. | On Writ of Certiorari to the Florida Supreme Court.

[February 2, 1948.]

Mr. Justice Douglas delivered the opinion of the Court.

Section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, 54 Stat. 1178, as amended, 56 Stat. 769, 770, 50 U. S. C. App. Supp. V. § 525, provides in part that no portion of the period of military service [1] which occurs after October 6, 1942,[2] shall be included "in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment."

Petitioner owned land in Florida on which taxes became delinquent April 1, 1940. Under Florida statutory procedure [3] the tax collector after notice sells the land at public sale and issues a tax certificate to the purchaser. At any time after two years from the date of the certificate the holder thereof may apply for a tax deed. Notice is given, a public sale is had, and a tax deed is issued. The

[1] The term is defined in § 101 (2) of the Act as follows:

"For persons in active service at the date of the approval of this Act it shall begin with the date of approval of this Act; for persons entering active service after the date of this Act, with the date of entering active service. It shall terminate with the date of discharge from active service or death while in active service, but in no case later than the date when this Act ceases to be in force."

[2] That was the effective date of the amendment which added this provision to § 205.

[3] Fla. Stats. §§ 193–194 (1941).

owner may redeem the land at any time after issuance of the certificate and before issuance of the tax deed.

In accordance with this procedure a tax certificate on petitioner's lands was issued August 5, 1940. Petitioner was on active duty in the Navy from August 18, 1942, until his discharge on December 18, 1945. Application for a tax deed was made by one Conrod in January, 1943, and the deed issued to him on March 1, 1943. It is through him that respondents claim by mesne conveyances.

Petitioner filed this suit in equity on March 25, 1946, seeking to set aside the tax deed by reason of § 205 of the Soldiers' and Sailors' Civil Relief Act. The Florida Supreme Court affirmed a judgment denying the relief, — Fla. —, 31 So. 2d 155, on the authority of its earlier decision in *De Loach* v. *Calihan*, — Fla. —, 30 So. 2d 910. The case is here on a petition for a writ of certiorari which we granted because the construction given to the federal Act seemed to us not only a dubious one but also at variance with *Illinois Nat. Bank* v. *Gwinn*, 390 Ill. 345, 61 N. E. 2d 249.

Under Florida law petitioner concededly could have redeemed any time between August 5, 1940, when the certificate was issued, and March 1, 1943, when the tax deed was issued. The provision of the federal Act with which we are here concerned became effective during that period—October 6, 1942. At that time petitioner was in the Navy and at once became a beneficiary of it. That means that the running of the time granted him under Florida law to redeem was tolled as long as he was in the military service. Since he would have had from October 6, 1942, to March 1, 1943, to redeem, the effect of the Act was to give him the same length of time after his discharge for that purpose. His present action being timely, there is thus no barrier to his recovery so far as the Act is concerned.

Two reasons, however, are advanced against it. First, it is argued that § 205 applies only where state law provides for transfer of title to the purchaser subject to defeasance by redemption. The Florida procedure is said to be not covered by § 205 since title passes only on issuance of the deed, which ends the period of redemption. We do not think § 205 deserves such a technical reading. The provision in question was added in 1942 to remedy what this Court had held to be a *casus omissus* in a preceding Act.[4] *Ebert* v. *Poston*, 266 U. S. 548, 554. Its language does not compel the narrow reading that is suggested; and the spirit of the amendment repels any such restriction. It covers "any period . . . provided by any law for the redemption of real property sold or forfeited," etc. We see neither in that language nor in the legislative history of the provision any purpose to restrict its application to cases where redemption follows passage of title.

The second reason urged against petitioner is the one adopted by the Supreme Court of Florida in *De Loach* v. *Calihan*, *supra*. It held that § 205 is limited by § 500. The latter section gives added protection to a person in military service by providing that no sale for taxes or assessments shall be made except upon leave of court "in respect of . . . real property owned and occupied for dwelling, professional, business, or agricultural purposes,"

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[4] The purpose was stated as follows: "The running of the statutory period during which real property may be redeemed after sale to enforce any obligation, tax, or assessment is likewise tolled during the part of such period which occurs after the enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942. Although the tolling of such periods is now within the spirit of the law, it has not been held to be within the letter thereof (I. R. 1269 C. B., June 1922, p. 311; *Ebert* v. *Poston*, 266 U. S. 549)." Sen. Rep. No. 1558, 77th Cong., 2d Sess., p. 4.

and by granting a given period for redemption.[5] The Supreme Court of Florida held that § 500 describes the class of real property on which a soldier or sailor is granted indulgence, while § 205 indicates the period of the indulgence. Under that view petitioner would fail because the property in question does not appear to be land "owned and occupied for dwelling, professional, business, or agricultural purposes."

We do not, however, read the Act so restrictively. The two sections—205 and 500—supplement each other. Section 500, applicable to restricted types of real prop-

[5] Section 500 reads in part:

"(1) The provisions of this section shall apply when any taxes or assessments, whether general or special (other than taxes on income), whether falling due prior to or during the period of military service, in respect of personal property, money, or credits, or real property owned and occupied for dwelling, professional, business, or agricultural purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees are not paid.

"(2) No sale of such property shall be made to enforce the collection of such tax or assessment, or any proceeding or action for such purpose commenced, except upon leave of court granted upon application made therefor by the collector of taxes or other officer whose duty it is to enforce the collection of taxes or assessments. The court thereupon, unless in its opinion the ability of the person in military service to pay such taxes or assessments is not materially affected by reason of such service, may stay such proceedings or such sale, as provided in this Act, for a period extending not more than six months after the termination of the period of military service of such person."

"(3) When by law such property may be sold or forfeited to enforce the collection of such tax or assessment, such person in military service shall have the right to redeem or commence an action to redeem such property, at any time not later than six months after the termination of such service, but in no case later than six months after the date when this Act ceases to be in force; but this shall not be taken to shorten any period, now or hereafter provided by the laws of any State or Territory for such redemption."

erty, gives greater protection than § 205. It restrains the sale for taxes or assessments of specified types of real property except upon leave of court and prescribes for them a specified time within which the right to redeem may be exercised if the property is sold. Section 205 extends in terms to all land and only tolls the time for redemption for the period of military service. The other construction attributes to Congress a purpose to protect only certain classes of real property owned by those in the armed services. We cannot do that without drastically contracting the language of § 205 and closing our eyes to its beneficent purpose. But as we indicated on another occasion, the Act must be read with an eye friendly to those who dropped their affairs to answer their country's call. *Boone* v. *Lightner*, 319 U. S. 561, 575.

Reversed.